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THE NATION

NOVEMBER 19, 1973 50 cents

# KANGAROO GRAND JURIES

Maxwell Silverstein
The Washington Post

How the Grand Jury's Traditional Protection of the Individual Was Perverted to Funnel the Fruits of Illegal Surveillance Into the Centralized Intelligence of Nixon's Presidential Administration

## From the Watergate Perspective

**FRANK J. DONNER & RIC**

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# LETTERS

## coalition on grand juries

DEAR SIRS: Legislation to prevent the government from misusing the grand jury has been proposed by several members of Congress and by an alliance of civil liberties and political groups, the Coalition to End Grand Jury Abuse. The coalition's bill, unlike the others, would allow the government to give a witness immunity, and thus force him to testify, only with the witness' written consent. It would also require the grand jury, rather than the prosecutor, to decide whom to subpoena; whom to give immunity; and whether to seek a contempt order if a witness does not testify. The coalition bill has not yet been introduced, although several members of Congress have indicated their interest in it.

The coalition bill, like one introduced by Rep. Joshua Eilberg (D., Pa.), would eliminate "use immunity," leaving transactional immunity as the only kind available in the federal judicial system. The Eilberg bill would also authorize a grand jury investigation independent of the established prosecutor's office, allowing the district court judge to appoint a private attorney as paid prosecutor for the grand jury. The coalition bill, the Eilberg bill and a third introduced by Reps. Charles Rangel (D., N.Y.), and Bob Eckhardt (D., Tex.) and nineteen other members would establish other procedural changes to benefit the witness.

The coalition was formed last summer by the National Lawyers Guild, the American Civil Liberties Union, the National Emergency Civil Liberties Committee, the Unitarian Universalist Association, and Women Strike for Peace. Since then, the United Methodist Board of Church and Society has joined the alliance, and several other organizations are considering the move. A few groups, like the National Conference of Black Lawyers, are aiding the coalition's general educational efforts, but not its lobbying.

The coalition hopes to see its bill introduced this fall, and to organize strong support for the bill, in and out of Congress. A House subcommittee plans to hold hearings this winter on grand jury reform and abolition. The coalition's address is Room 708, 412 5th Street, N.W., Washington, D.C. 20001. *Martin Fassler*

## Watergate and the Founders

*Manchester, N.H.*

DEAR SIRS: In recent issues of your magazine two historians have linked Watergate with the U.S. Constitution.

In "Watergate: Surreptitious Entry" (Sept. 10) Herbert S. Levine wrote that "the American constitutional tradition provides certain institutional safeguards against extremist movements of all sorts." Levine avers that the Constitution has been an element in preventing the development of an American Fascist movement.

John S. Rosenberg argues in "The Antifederalists Told Us So" (Oct. 8) that a familiarity with the warnings of the first opponents of the Constitution—the Antifederalists of the 1780s—would have prepared us for Watergate. Unlike Levine, Rosenberg seems to contend that the Constitution yet contains the seeds of tyranny.

Neither is entirely correct. If American Negro slavery under the Constitution was not fascism, as defined, the slaves could have coined a good synonym. Even after the abolition of slavery, civil libertarians have had to seek continually—and not always successfully—those constitutional interpretations that block the rise of a police state. On the other hand, a strong executive, like FDR, did much to expand individual freedom. But a President shorn of needed powers, or one like James Buchanan who failed to use what he had, is hardly capable of furthering civil rights. Lincoln phrased it best: "Must a government, of necessity, be too *strong* for the liberties of its own people, or too *weak* to maintain its own existence?"

I fail to see how Lincoln's poser can be handled intelligently by calling Nixon & Co. Nazis, or by resurrecting the likes of crafty George Clinton. . . . *Charles R. Denton*

# EDITORIALS

## The Clamor for Resignation

Much time can be wasted speculating about the two missing tapes. It is conceivable (anything is conceivable in Washington today) that they never existed. But there can be no doubt that two conversations—with Mitchell on June 20, 1972, and John Dean on April 15, 1973—were the critically important ones. Nor can there be any doubt that, as early as September 29, the President knew that tapes of these conversations were either missing or nonexistent. Yet he concealed this fact from Senators Stennis, Ervin and Baker. He concealed it from the public. He concealed it from the press (if he had responded fully to one question at his October 26th press conference he would have disclosed the fact that these tapes were not available). And he also concealed the fact that they were missing in his initial overtures to Judge Sirica. Finally, it now appears that he even failed to tell his own counsel, Charles Alan Wright, that the two most vital tapes demanded by the judge would not be forthcoming.

Such conduct is inexcusable; it has destroyed any vestige of credibility that the Presdent still retained. To Senator Goldwater, the President's credibility "has reached an all-time low from which he may not be able to recover." Similar sentiments have been voiced by Senators Pearson, Hatfield, Schweicker and Buckley, among other Republicans. Business leaders are deeply troubled and unhappy. Editorials urging the President to resign have appeared in *The New York Times*, *Time* (the first editorial in the fifty years of its existence), the *Detroit News*, the *Denver Post*, the *Atlanta Journal*. Republican Sen. Edward Brooke has called for the President's resignation. So has columnist Joseph Alsop—a significant weather vane—and commentator Howard K. Smith. Senator Goldwater, "on vacation" in Wichita, Kan.—perhaps the first person in living memory to spend a vacation in Wichita—met with columnist William Buckley at the airport, and the latter then suggested that perhaps Nixon should resign. In fact something like a consensus is now emerging from former Nixon partisans—some of whom quietly, some publicly, are joining the movement to force the President out.

This mounting clamor should be viewed with a cold eye. Some months back resignation seemed to be the neatest, quickest and least traumatic way out of an impossible situation (see editorial, "The Case for Resignation," *The Nation*, June 4). But with Agnew's resignation, the Ford nomination, the ouster of Cox, Richardson and Ruckelshaus, the deception about the tapes and other recent developments, the top priority is to get the impeachment inquiry under way. If Nixon had named as Vice President a person who had the qualities needed in a President—someone the public could view in that light—the case for resignation would have been more persuasive. But Ford was named not because he possessed these qualities but because he lacked them; it was assumed that he could win early confirmation and that his presence in the wings might discourage impeachment.



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The impeachment inquiry, if it is properly pressed, should resolve once and for all issues that have sorely perplexed and divided the nation. The people should *know* the facts; they are entitled to them. Impeachment offers the only constitutional means by which the case against the President can be made in an orderly public manner. If the President simply bows out now, the deeds which resulted in the initiation of the impeachment inquiry will never come to light. In retirement Nixon would sulk, plot and contend that "enemies" had stabbed him in the back. And if he is innocent, as he insists, he should in fairness be given an early opportunity to prove it, and the only available forum is the Senate sitting as an inquest of the nation.

And resignation now would have other consequences. It would lead to loudly orchestrated pleas for "healing" and "reconciliation," under cover of which the public would be encouraged to forget Watergate. Naturally, the Republicans would like Nixon to go, so that they could campaign in 1974 and 1976 free of the onus of defending him. Conservative Republicans of the Goldwater-Buckley type want to be rid of him because their "cause" has suffered recently a series of blows from which it may not recover. This cause nearly collapsed with Agnew's resignation. If Nixon were on trial before the Senate the Conservatives would be forced to rally to his defense. Under any circumstances, Sen. James Buckley will have a difficult time winning re-election. But if he is forced to barnstorm across New York State apologizing for Agnew and defending the President his chances will indeed be minimal.

If the President should resign, we would not weep; it is the clamor for resignation, and the possible consequences, that we find disturbing. In the perspective of recent events, resignation might lead to a national cop-out. If he departs voluntarily, ministers, editorial writers, opinion leaders and network commentators will rejoice that Watergate is now happily behind us; they will say that the crisis has been resolved, the nation "cleaned" and "purified" and that the time has now come for all good men to uphold the hand of President Ford. We would be told *ad nauseam* that Richard Nixon should be permitted to depart in peace to whichever coastal retreat he prefers and that nothing became his holding of the office of President as well as his decision to leave it.

This Niagara of false sentiment would create an atmosphere in which the Watergate investigations and trials would be submerged. It would be "back to normalcy," with Gerald Ford as the historical counterpart of Calvin Coolidge. Faced with such prospects, the drumbeat for the President's resignation should not be permitted to slow down a systematic and careful impeachment inquiry. At the same time, the Ervin committee's term should be extended and a new independent prosecutor named by the courts and not by the President. Should Nixon linger on as a commuter President, dodging in and out of the White House, it would indeed be hazardous, but to permit the Watergate inquiries to go down the drain would be disastrous. It is far better that we face this crisis squarely and promptly than that we brush it aside and pretend that it never existed.

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## Saxbe and Jaworski

The carefully linked nominations of Sen. William Saxbe to be Attorney General and Leon Jaworski to be special prosecutor are in the pattern of the President's "clever" politics. Saxbe was tapped for Attorney General because he can probably be confirmed without much delay or contention. The President assumes that the "old boy" ploy will work for him, as it will, presumably, for Ford. It is hard to believe that the President likes or trusts Saxbe who, for all that he comes from Ohio, chews tobacco and holds conservative views on most issues, is given to speaking his mind. His irreverent comments on the President and his Administration can hardly have endeared him to Mr. Nixon. The President, of course, could have done worse than Saxbe, but he could easily have done much better. He might have named Albert Jenner, the distinguished Chicago Republican lawyer; or James Thompson, the brilliant Republican U.S. Attorney for Northern Illinois; or Herbert Stern, the equally brilliant Republican U.S. Attorney in Newark. Aware of the fate of Richardson and Ruckelshaus, Saxbe no doubt received assurances that he will have a free hand and not be asked to fix any antitrust cases, but what good are such assurances from this President?

The Jaworski nomination was linked with Saxbe's to make it easier to confirm Saxbe, i.e., Jaworski would be the President's nominee, not Saxbe's. It was also a bid for support from conservative Southern Democrats. Jaworski is part of the Texas establishment and a close friend of John Connally and the late Lyndon Johnson. Naming him at this time was also designed to forestall Congressional enactment of a measure which would set up the office of independent prosecutor, transfer the files and personnel of the Cox task force to it, provide it with adequate funds and permit Judge Sirica to name the person to head it. Congress should proceed to enact the legislation introduced by Senator Bayh which would set up such an agency; the measure has fifty-three co-sponsors, Democrats and Republicans. The position of the American Bar Association, as voiced by Mr. Chesterfield Smith, its president, is unassailably sound: "As long as there is any investigation involving the White House, the President should have no say in appointing the prosecutor. Nor should the President have the power to dismiss such a special prosecutor as he did Mr. Cox."

Mr. Jaworski may have some of the qualifications to serve as special prosecutor, but that is not the point. He has said that the President has agreed, in case differences should arise, to consult the bipartisan leadership of the Senate and House and the chairmen of the Senate and House Judiciary Committees in resolving them. But that is another "used car" Nixon nifty, for if those consultants voted on a partisan basis, the ultimate decision might be made by Sen. James Eastland of Mississippi. And Mr. Jaworski would still be the President's nominee, responsible to the President, and subject to being removed by the President.

It is said that the Bayh legislation is not constitutional, but the contention is dubious. Congress has the power to enact legislation of the kind proposed. It controls the purse strings. And its power to organize and reorganize agencies of government is not in dispute. What it lacks is the Executive's power of appointment. But the Constitution contains a provision which creates a minor exception to the appointive power—namely, that Congress may by law vest appointment of such "inferior officers" as it thinks proper, in the courts. It might be better if the power to name a prosecutor were to be given to the presiding judge of the Court of Appeals, but Judge Sirica can assign cases to other district court judges; he does not need to hear all Watergate matters himself. Under the circumstances, Congress should not back down; it should not permit the President to pre-empt the particular field of action by the "clever" Jaworski nomination. To be sure, the President could veto the Bayh or some similar measure and it might be difficult to override him. But would he risk a veto? If he did he might have another "firestorm" on his hands.

## A Mound of Skulls

Among many offenses, Richard Nixon has committed one for which he cannot be indicted, impeached, or held legally to account. He has left behind him a trail of disrupted lives. For the most part the victims were not guiltless, but for a few of the younger men one must feel compassion. Under a President of normal character, with his share of faults but restrained by a decent respect for the office, they would not be jobless, their careers ruined, bargaining for immunity, or headed for prison.

The devastation Nixon spread is not limited to any single class of individuals. Take even such a hard-boiled, repugnant and essentially limited person as John Mitchell. Without Nixon, he would never have made it to the highest legal office in the land, but what does it avail him now that he was once Nixon's Attorney General? How much better off he would be if he had never met this strangest of Presidents and were still practicing law in his specialty of tax-exempt bonds. And how much better off the country would be!

The point is well made by Conrad, the fine cartoonist of the *Los Angeles Times*. In a take-off on the graveyard scene in Hamlet, Conrad has Nixon standing with a skull in his hand. The caption for the picture reads, "Alas, poor Agnew, Mitchell, Stans, Ehrlichman, Haldeman, Dean, Kalmbach, LaRue, Mardian, Strachan, McCord, Liddy, Chapin, Hunt, Colson, Krogh, Magruder, Young —I knew them. . . ."

That list, long as it is, is incomplete. Thus Conrad omitted Clark MacGregor, who took over as Nixon's campaign manager after Mitchell left the job, citing "compelling family reasons." MacGregor avows his innocence and complains that he was deceived or kept in ignorance, e.g., of the fact that Herbert Kalmbach was using campaign funds "directly or indirectly for the Watergate seven," of the break-in at the office of Daniel Ellsberg's psychiatrist, etc. Nor did Conrad's caption list Tom Charles Huston who, back in Indiana, is now thoroughly disillusioned with Nixon.

Nixon's appointments have, by inadvertence, brought some honorable men into prominence. Walter Hickel of



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Alaska was an early medalist; he differed with Nixon on some key issues and was fired. Add George Romney, who tried to do a decent job with housing, former Secretary of Commerce Peter G. Peterson, and of course the outstanding trio of Archibald Cox, Elliot Richardson and William Ruckelshaus. There is a kind of poetic justice in these situations. Rogues consort with rogues and usually end up accusing one another, while honest men support other honest men. Richardson had been trying to serve Nixon, but gave up when Cox was fired; Ruckelshaus was fired when he refused, as Richardson had refused, to dishonor himself.

In between the two categories, honorable but in a less spectacular way, are Richard G. Kleindienst, Hugh W. Sloan, Jr., Herbert L. Porter, Robert Alan Reisner and others. Sloan left the Nixon re-election committee when he got wind of what was going on. Kleindienst escaped in a somewhat ambiguous way, which is also revealing of Nixon's outrageous behavior when he is crossed. At his confirmation hearing before the Senate Judiciary Committee in March 1972, Kleindienst denied having been pressured by the White House in connection with the ITT antitrust suits. Now it appears that Nixon phoned Kleindienst, ordering him to drop the ITT appeal, and ended the conversation with an "expletive" and the insulting inquiry: "Don't you understand the English language?" Kleindienst thought it over and sent word to Nixon that if he persisted in his instructions he (Kleindienst) would submit his resignation. Nixon understood the English language and allowed the appeal. To this category should be added the name of Charles Alan Wright, the President's counsel, who first learned of the missing tapes when his secretary phoned him the latest bad news. Mr. Wright concedes that he would have been happier had he known they were missing when he assured Judge Sirica that his client would comply "in all respects" with the court's order.

The case of L. Patrick Gray is pathetic. He was eager to be head of the FBI and burned some papers on instructions from Nixon's aides, but his instincts were essentially decent. "*Yo tengo mucho dolor en mi corazon ahora*," he said to Sen. Joseph M. Montoya at the Watergate hearings. Montoya translated for the audience: "I have a lot of hurt in my heart at this time." "*Si*," Gray said.

The human wreckage in the train of this unfit President is something rare in American history. His mode of administration is likewise unprecedented. He chooses assistants for instrumental intelligence and willingness to act as accessories to misdemeanors or felonies. He makes decisions on devious hunches of his own. His advisers in the Cox firing were Alexander Haig, Charles Alan Wright and Ron Ziegler. Something can be said for Wright, but in place of the other two Nixon could as well have consulted the tea leaves. Haig especially distinguished himself with his speech to Ruckelshaus: "Your Commander in Chief is giving you an order." He seems unable to distinguish between the Deputy Attorney General and a second lieutenant. With advice like this, Mr. Nixon can only do himself and the country even worse damage than he has already done to his subalterns, accomplices and victims.

## Missile Madness

The power and cost of nuclear weapons have long since passed the threshold of lunacy, but a story titled "The Poseidon Misadventure" in *Business Week* adds a new dimension of recklessness to missile research and development. If the nation's security depends on the Navy's nuclear arsenal, we are far worse off than before Poseidon was conceived. Only Lockheed Aircraft and its subcontractors and the Navy's own staff of missile experts have benefited, at a cost—so far—of $4.2 billion.

By all indications the Polaris missile was reliable and formidable, but the Navy wanted something bigger and therefore, in the Navy's way of thinking, better—when it worked. Poseidon sometimes works, but on the basis of test firings its reliability is less than 64 per cent. Out of fifty-two test flights, about equally divided between submarines on shakedown cruises and operating submarines, nineteen have been failures or partial failures. In actual warfare, a partial failure might be worse than a total failure. Most of the failures have involved inability to re-enter the earth's atmosphere and fire ten nuclear warheads at test targets, but five failures have been near the beginning of flight. In one case, instead of emerging from the water and rising vertically, the missile went into a horizontal flight path and plunged into the ocean. Since it was carrying dummy warheads, no harm was done.

Poseidon is only 3 feet longer than Polaris, but much fatter—74 inches in diameter as against 54 inches for Polaris. That makes the parameters quite different, hence the current difficulties. The Navy has embarked on a three-year program to find out what is the matter and how to correct it. The aim is to achieve 80 per cent accuracy, which is the minimum acceptable. How much that will cost no expert can estimate at this stage. Secrecy precautions have been imposed on all contractors, and Defense Secretary James R. Schlesinger and Navy Secretary John W. Warner have been assuring Senators and Representatives that there is nothing to worry about, and that Poseidon's follow-on, the Trident missile system, will be even better than Poseidon.

But those who regard these nuclear monstrosities as vital to U.S. defense have, it would seem, a good deal to worry about. Poseidon was proclaimed operational in March 1971. Two years and eight months later, it obviously isn't operational. But meanwhile twenty Polaris subs have been converted to accommodate the longer missile, and another six are in process of conversion. That leaves only fifteen Polaris-armed subs available for sea duty. If the Soviets are really intent on doing us in, now's their chance.

## Secular Prophet

W.H. Auden has been described since his recent death as having been in these last decades the most distinguished poet writing in English. That is a fair judgment. He was one of the last in this period to partake of an earlier tradition that implicitly advanced large claims for poetry; though his verse, for all its technical accomplishment, rarely essayed to rise above "the middle tone," its con-



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cerns were most often broad and serious. Indeed, he was a secular prophet—the only kind the age would accept—no less earnest, and perhaps no less effective, for being mildly ironic and self-deprecating. Both his formal bent and the felicity of his occasional verse testify to another obsolescent trait, a sense of history as being more than a succession of events, and of our present troubles as being themselves rooted in history. His view of human affairs had a decent complexity, expressed in his pointed use of casual idiom.

*Exiled Thucydides knew*
*All that a speech can say*
*About democracy. . . .*

Besides the obvious hit at the self-serving ways of statesmen, the lines quietly suggest that there is more to democracy than is commonly trotted out on public occasions.

The technical brilliance of much of his writing, the paradoxical ease of his infinite contrivance, represent a kind of gift that has been rare among poets of the English language, and generally under-appreciated. The race whose ideal of poetry was marked forever by Shakespeare's Everest and Mindanao Deep has difficulty in appreciating gifts less Titanic in scale; in the Augustan Age itself, when a muse more polished and less ambitious was generally cultivated, a critic said to the greatest poet of the time about his translation of the *Iliad*, "It is a very pretty poem, Mr. Pope, but you must not call it Homer." W.H. Auden was the Alexander Pope of the 20th century, and he was esteemed and disprized in proportion. His ingenious mind delighted in technical experiment, and his originality is confirmed as much by his reviving of old modes as by his absolute inventions. He composed a long poem in alliterative verse, "The Age of Anxiety," harking back to traditions that antedate the appearance of the English language. It was most successful, though it was given a sour reception by critics who had so far assimilated Auden's own *nil admirari* airs as to be beyond feeling astonished at a mere work of genius. And he gave the sonnet a contemporary dress, using effectively a diction drawn from the educated speech of our time—not, Phoebus knows, the ideal vehicle for passionate utterance. In sonnets as commonplace and touching as a "Character" of La Bruyère, he generally made up for the flatness of the language and the deflating quality of his own wit with his strategic opening lines—he was naturally a master of what musicians call "the attack":

*A shilling life will give you all the facts:*
*How father beat him, how he ran away. . . .*

The sonnets, too, often have the dry common sense and penetration of the Enlightenment figures he referred to so frequently in his poems and whose temperament he shared; he frames definitions as eagerly as if he were an unpompous, unbellicose Dr. Johnson. His sonnet, "The Novelist," begins:

*Encased in talent like a uniform,*
*The rank of every poet is well known. . . .*

There follows a sketch of the poet as the temperamental star of the 100-yard dash, and then a comparison with the novelist, who must train for the long haul, discipline himself *not* to be brilliant,

*And in his own weak person, if he can,*
*Must suffer dully all the wrongs of man.*

Excellent as criticism, and affecting as a moral observation.

Tireless experimenter though he was, the backbone of his verse came directly from A.E. Housman, indirectly from Heine. With the former he sometimes descended to doggerel, always without apology and mostly to good purpose. Perhaps the somewhat archaizing modesty of his idiom and intention, again akin to Housman's, points most clearly to the element of *morbidezza* in his work. At his best, philosophically speaking, he was a Stoic. At his worst, he was merely resigned. The great crises of his youth and early middle age, the Spanish Civil War and the general war that followed, evoked from him his most powerful verse, poems in which he is the voice of those resolute in misfortune. In the spiritual wasteland of the 1950s, he published *The Age of Anxiety*, in which art attempts to triumph over banality by sustained improvisation:

*How wise and witty when you wake up*
*How glad and good when you go to bed*
*Do you feel, my friend?*

The spiritual materials the age afforded, such as they were, Auden put to use. And since he could not, as a matter of character, apply to the great resource of the writers of his time, that of heightening banality with hysteria, the meager passions of that day appear in his verse without disguise. Thereafter, he was the chronicler of the personal life—without Housman's painful conviction that the personal life was the one thing of importance in a casually inimical universe—and skeptical about the public life, as if history, though real, were no longer interesting but simply a tissue of errors that an intelligent man must discount in advance. At that point the immanent conviction of those of English speech that only a Shakespeare, or a Milton, or in lean times a Wordsworth, will do, worked to produce a reaction against Auden's dispassionate soul, finding it, precisely, too lacking in passion for the name of poet. But even in the full force of that conviction, one is aware how imperfectly it exhausts his art and scope. It was no barnyard fowl, soaring with middle wing, that on the theme of the decade that ended in World War II, uttered the long threnody of "September 1, 1939." In that poem—by no means uncharacteristic—Auden assumed, together with the responsibility of speaking for the time, the innocent self-exaltation of the prophet who forgets himself in so doing:

*Defenceless under the night*
*Our world in stupor lies;*
*Yet, dotted everywhere,*
*Ironic points of light*
*Flash out wherever the Just*
*Exchange their messages:*
*May I, composed like them*
*Of Eros and of dust,*
*Beleaguered by the same*
*Negation and despair,*
*Show an affirming flame.*

EMILE CAPOUYA



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FROM THE WATERGATE PERSPECTIVE

# KANGAROO GRAND JURIES

FRANK J. DONNER & RICHARD I. LAVINE

For two generations, the American imagination has either denied the possibility of fascism in this country or, while conceding its possibility, has been unable to project a convincing description of how fascism may come, to identify the institutional stress points, and describe its potential constituency. Watergate teaches that, for all our constitutional and political restraints on the abuse of power, if a police state comes into being here it will surely rest on an all-powerful Presidency in control of a centralized political intelligence apparatus. In its January 3, 1972 issue, *The Nation* published "The Grand Jury Network" (Donner and Cerruti), a report on the growing use by the Department of Justice of federal grand juries to curb political dissent. Events of the past two years have substantiated the earlier contention that this distortion of the grand jury function is part of a master plan to attack political opposition through a new centralized intelligence system. More specifically, the Internal Security Division (ISD) of the Justice Department has used the traditional accusatory function of the grand jury as a cover for:

(*1*) A secret White House-sponsored network for the systematic collection of political intelligence by illegal means and for purposes unrelated to law enforcement.

(*2*) The laundering or legitimizing through grand jury interrogation of such tainted evidence.

(*3*) The development of evidence through the grand jury process to support an indictment already handed up —a form of pretrial discovery not permitted in criminal cases.

(*4*) The use of civil contempt, not to obtain testimony but solely to punish uncooperative witnesses. In the past eighteen months, twenty-one individuals have, after grants of immunity, been jailed for contempt.

Specific instances of these practices will be dealt with in a moment, but before revisiting the grand juries we need to look more closely at the roots of these abuses, now laid bare by Watergate.

The enormous range of the Watergate disclosures invites a piecemeal response, and the large patterns thus break down into small clusters of seemingly unrelated events. It is, of course, important to know whether Dean or Ehrlichman is telling the truth, what may be learned from the Presidential tapes, the extent of the President's knowledge of the events, the source of authority for Operation Gemstone. But the concrete question of who did it conceals the deeper issue of why it was done. In American public life we almost invariably reduce power conflicts to issues of due process, of individual rights; the one is typically abstract, and the other more accessible because it is specific and "human." Finally, a need for stability, a desperate dependence on institutional order and continuity, makes us reluctant to confront claims of usurpation of power, as though the very recognition of its possibility would deny meaning to the American experience.

But one can hardly sweep under the rug the wealth of evidence, uncovered by Watergate, of the growth of Caesarism in the White House, a phenomenon made visible by the President's plush accouterments of power and the use of his office for personal gain. The meat for this Caesar, the means by which he has sought to consolidate his power, is political intelligence, a system of surveillance and related practices ranging from informers and wiretapping to sabotage, break-ins, mail interception and dossiers. From almost the start of his first term, Nixon initiated a series of moves designed to seize control of the intelligence capability of the nation. Beginning in 1939, when the FBI was first given domestic intelligence jurisdiction, the intelligence community in this country had been highly diffused, with a variety of institutional bases and haphazard coordination. This decentralization reduced the efficiency of domestic surveillance and postponed the inevitable showdown with libertarian forces. In the same period a democratic constituency had on the federal level (urban and state units are another story) imposed jurisdictional limits on the scope of intelligence practices and targets; these restraints, though precarious and frequently evaded, were still no mean achievement when one recalls the struggle to rein in the surveillance excesses of the Defense Department, the CIA and the FBI. But the lack of effective and publicly responsive facilities to monitor essentially secret operations left open the danger of abuses, periodically exposed by alert Congressmen, defecting whistle-blowers and the media.

What President Nixon undertook was nothing less than the relocation and centralization of the entire intelligence establishment in the White House. More, he moved to eliminate all the bitterly won jurisdictional restraints on domestic espionage. And the justification for this no-holds-barred secret police *apparat* was national security, a goal which assertedly absolved the President from responsibility to the law or, save by impeachment, to the Constitution and beyond the reach of the courts. When in 1972 the Supreme Court unanimously rejected these expansive claims as a justification for domestic intelligence practices, the Administration simply renewed its contentions about the very same practices, but now under the warrant of "foreign intelligence."

The main leverage in the campaign to take over political espionage was the alleged need to refocus intelli-

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gence priorities and coordinate intelligence sources. The agencies traditionally responsible for domestic intelligence had developed a vested interest in the old Left and in antiquated files of political subjects. But the entrenched bureaucrats of political surveillance thought they had a powerful shield against the new wave of political headhunters—the Congress, which was itself under pressure from White House power seekers, and the Congressional anti-subversive committees. So it was that J. Edgar Hoover turned to his Congressional allies for protection against threats to his fiefdom, not from his liberal enemies but from White House firebrands. His seemingly bizarre Congressional testimony about the alleged Berrigan plot in November 1970 was an attempt to find sanctuary in his Congressional power base. Hoover's intelligence methods and priorities supported a structure that had evolved over a quarter of a century, built cooperatively by the bureau, Congressional committees and tenacious cold-war supporters. Now the committees were moribund, the bureau under severe attack, its senile director obsessed with his immortality, the cold war receding into the past, traditional surveillance practices riddled by Supreme Court decisions as new targets were moving to the center of the radical stage. In addition, the cry for more sophisticated intelligence and a cohesive structure was not confined to the White House. It was also demanded by sections of the surveillance community symbolized by the clash between Hoover and William Sullivan, former director of FBI domestic intelligence, and an Administration ally.

## An Administration 'Besieged'

Domestic, peacetime intelligence systems have, with the growth of the modern state, evolved into a centrally controlled intelligence community. In the course of this development, political police became a special force independent of all other instruments of state administration, enjoying unlimited jurisdiction, answerable only to the head of state. This process was enormously accelerated by the release of powerful movements for change, beyond the control of conventional police units—one need only recall Sidmouth's England, Fouché's France, the European continent after 1848. In the United States, the "natural" growth and centralization of the intelligence community has been hobbled for reasons already indicated, but the political stimulus to such expansion is unmistakable.

In 1969, the incoming Nixon Administration was faced with a society heaving with unrest. All of the major intelligence initiatives in the first Nixon term can be traced to a hysterical reaction to successive waves of protest. A "siege mentality" gripped the Administration almost from the day it took over. Nixon was haunted by the fate of Johnson, ambushed by what seemed to be the revolt of an entire generation. Those long years of powerlessness, of wandering in the wilderness, was it all to be for naught? Were the country's unruly dissenters to be allowed to frustrate Nixon's too-long-delayed entry into the promised land?

Early in 1970, the Administration began intensive preparations to expand and improve its surveillance capability over militant left-wing individuals and groups. In a series of interviews with a *New York Times* reporter, Administration officials conveyed the President's concern about the wave of bombings and bomb scares. On March 12, Nixon and some of his aides met at dinner with New York University Prof. Irving Kristol. According to the news account, "the discussion included attempts to draw parallels between young American radicals and the Norodniki, the children of Russian aristocrats who assassinated Czar Alexander II." No one mentioned Alexander III's jackboot repression of the radicals in the wake of the assassination, but the extraordinary horror—if not hatred—of radical youth comes through the interview.

The "official view" was that the militants were political criminals. In mid-March President Nixon told the Congress that the bombings were the work of "young criminals posturing as romantic revolutionaries." In April one of his advisers told the *Times*, "It wouldn't make a lot of difference if the war and racism ended overnight. We're dealing with the criminal mind, with people who have snapped for some reason." A "key official" in the Administration added, "We are facing the most severe internal security threat this country has seen since the depression." He said that the President had "expressed distress that the intelligence system was not capable of pinpointing the activities of these people" and insisted that there was a desperate need to improve government intelligence. One White House aide proclaimed, "The greatest safeguard for the rights of individuals is to have good information on what [the radical fringes] are doing." He urged that the government substitute for traditional criminal prosecutions the collection of information to "prevent the perpetration of an act of violence." This benign verbiage masked the preparation of a comprehensive plan for restructuring the American political intelligence system into a cohesive political police force serving the same purposes as its counterparts in 19th-century European despotisms.

President Nixon personally initiated a project to draft recommendations for intensified domestic intelligence at a meeting in the White House on June 5, 1970. Present in the Oval Office that day were Nixon; H.R. Haldeman, then White House chief of staff; John Ehrlichman, then the domestic counselor to Nixon; Tom Charles Huston, a Presidential aide, and the chiefs of the four intelligence agencies: J. Edgar Hoover; Adm. Noel Gayler, director of the National Security Agency; Lieut. Gen. Donald V. Bennett, director of the Defense Intelligence Agency; and Richard Helms, director of the CIA.

The proposals submitted by the committee, believed to be the handiwork of then domestic intelligence chief William Sullivan and now known as the "Huston plan," included a program of electronic surveillance of "individuals and groups in the United States who pose a major threat to the internal security," covert mail coverage or the opening of sealed materials before delivery, surreptitious entry (burglary), and an increase in the number of "campus sources" in order to "forestall widespread violence." Approved by Nixon on July 23, the plan was assertedly never implemented because of Hoover's opposition.



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But Hoover was not objecting because the proposed tactics were illegal. The FBI had routinely made illegal searches, including both burglary and mail interceptions, before the policy was changed in 1966. What disturbed Hoover was the proposal of an interagency group to supervise the bureau, thus ending his one-man rule and acting as a buffer between him and the President. "What was really at stake," reported one participant in the report's preparation, "was whether Mr. Hoover was going to be able to continue running the FBI any damned way he wanted." In a recent interview Huston has explained Hoover's actions in the same way: "In my judgment if Hoover at any time raised what I regarded as a principled objection . . . if he had said this thing is wrong because it is unconstitutional, the President doesn't have the power to order it, that it is unethical . . . any kind of principled objection, then on that basis he'd have hit me right between the eyes. . . . But when a guy says, you know, that I don't want to do it—that it's too risky, but I don't care if someone else does it, then as far as I am concerned, I think it's fair to draw an inference that the guy is just trying to save his butt and duck the responsibility that's his and of the agency that's charged with these problems." ("Tom Charles Huston: Don't Call Him a Sonovabitch," by Terence Sheridan, *Rolling Stone*, October 25.)

Haynie, The Courier-Journal

*'Help! My Name Is National Security and I'm Being Threatened!'*

Although Hoover's objections stymied the Huston plan, it hardly moved the Administration from the conviction that some form of secret police operation (always euphemistically described) was imperative to contain the radicals. As we will show, the Internal Security Division of the Department of Justice and the bureau pressed forward to spearhead the drive on the radicals. The release of the Pentagon Papers, one of a series of leaks, caused another White House explosion in 1971—a "panic session," Colson called it—and demands for an effective intelligence sanction to choke off these new threats to the Administration's authority. Again this response throbbed with a wildly exaggerated insistence that the very foundations of Presidential power were being undermined. As the trial record in the Ellsberg case later demonstrated, the asserted threat to national security was ludicrously overstated, but every surveillance initiative seeks acceptance because of a claimed emergency, an imminent peril to a vital interest. In most cases such assertions are ritualistic, but in the corridors of the White House and in the Oval Office it became a *cri de coeur*, an expression of a fear of betrayal from within. From the beginning, Nixon and his aides felt surrounded by hostile forces, by holdovers from prior administrations who were in league with the press and the networks to "get" the President.

Mounting frustrations plainly took their toll of Nixon as he lurched back and forth from megalomania to paranoia. In the tightly knit Presidential circle, an ominous thesis was evolving, a sort of political Manicheanism in which legitimate critics and rivals for power, regardless of their political affiliation, were indiscriminately condemned as "enemies" to be stopped by any means necessary. Grandiosity and bitter rancor began to set the tone of the Presidency, completely personalizing it in the process. Only those could qualify for the President's approval who shared his self-appraisal that he was a lion beset by jackals. In such an atmosphere what was more natural than the transfer to the domestic theatre of intelligence tactics traditionally used against foreign enemies, a real-life version of a James Bond script performed in our own back yard? Viewed in this chilling setting, many seemingly disconnected images again fuse into a pattern: the shuttered inward-turning world of the Presidency, supported by the fanaticism of personal loyalty; the cult of toughness ("balls"); the rise to prominence of kamikaze types such as Colson and Ehrlichman; the "enemies" list, and the Nixon-ordered 1969-71 wiretaps of staffers and newsmen.

Nixon's activation in July 1971 of the "plumbers" unit is enormously significant. For the first time in American history, a Chief Executive formed an espionage network, a secret intelligence system answerable only to himself and operating outside the law and the Constitution. To most Americans such an action must seem borrowed directly from the manual of a police state, but as Nixon saw it, he could do no less, for, as he told Mardian at San Clemente in July 1971, his capacity to govern was threatened. No member of the White House staff close to Nixon was permitted to forget that a sanction against Ellsberg was an obsessive Presidential priority. His orders were to "get" Ellsberg; had he not



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learned from his other "crises" that capture of the offensive by a bold stroke was the most effective way to deal with "enemies" out to "get" him? Had he not by such tactics triumphed over Alger Hiss, another Eastern intellectual, twenty-five years earlier?

Ehrlichman, Krogh, Dean and the rest must have felt very much like the courtiers who heard Henry II's angry cry against Thomas à Becket, "Will no one rid me of this turbulent priest?" The formation of the plumbers' unit; the CIA involvement; the burglary of Dr. Fielding's office; the tenacious surveillance; the hoaxlike covers (national security, "prosecutibility"); the barrage of grand jury subpoenas in Boston and Los Angeles; the organized attempt to assault Ellsberg on the Capitol steps in May 1972; the attempt to influence the outcome of the Ellsberg trial by offering the trial judge the directorship of the FBI; the deliberate suppression for weeks of the evidence of the burglary; the invented laxness of Hoover and the FBI—are all the fruits of the President's nightmare reaction to the Ellsberg affair. In his May speech, Nixon described the situation as "so grave as to require extraordinary actions," an organized effort to "find out all it [the plumbers' unit] could about Mr. Ellsberg and his motives." If there was a "White House horror," this corrupt use of power, unmistakably instigated by the President, was it.

Significantly, a major frustration of the Cox investigation was the Administration's refusal to turn over materials relating to the plumbers. And it will be recalled that the President admittedly told Asst. Atty. Gen. Henry Petersen last April "to stay out of national security matters" when interrogating the master plumber, Howard Hunt.

## Popkin's Ordeal

Despite the claim advanced to witnesses that the Ellsberg grand jury in Boston was a legitimate law-enforcement proceeding, newly revealed background facts establish that it was merely a branch of a White House project intended primarily to develop material which would smear Ellsberg and inspire extralegal sanctions against him. For all of the spooky rhetoric used by Hunt, the grand jury proceeding was part of a campaign of political gangsterism made familiar by such films as *Z*. It had a dual objective: to give color to the suggestion that Ellsberg was a victim of some repellent psychic deviation (preferably sexual in origin) and to identify him as a member of a conspiratorial ring with ties to Russia.

Two memoranda on the "Pentagon Papers project" in the Watergate record are revealing. The first, dated August 11, 1971, from Krogh and Young to Ehrlichman, reports on the progress of the Boston and Los Angeles grand jury proceedings and the preparation of a CIA psychological study (considered "disappointing" and "superficial"), and proposes the seizure of Dr. Fielding's records by a "covert operation," which Ehrlichman approves "if done under the assurance that it is not traceable." This memo corroborates testimony that the major focus in the Ellsberg matter was on personal smear—not, it should be noted, that such *apparatchiks* as Liddy and Hunt had difficulty with the notion that a man who had "turned" from ardent hawk to a midnight purloiner of national secrets was indeed deranged.

The memo establishes that both grand juries were feeding into the plumbers, who coordinated and evaluated the data received for inclusion in a comprehensive investigative "game plan." But when Ellsberg's counsel, six months later, attacked the Boston grand jury on the ground that its process was being improperly used to develop evidence for the Los Angeles case, the ISD lawyer vigorously denied it. And his Los Angeles colleague took the same position when Ellsberg moved the court for a protective order to prevent the use of the Boston grand jury as a source of evidence for the Los Angeles trial. The courts relied on these questionable representations in denying relief.

By August 26, plumber David Young had broadened his vision. Initially the aim of the project had been, to use Young's euphemism, "the development of a negative image." Now, according to a memo of that date, a new theory was developed as the result of a meeting with Congressional moguls: Mardian, a Justice Department functionary, and the Defense Department's general counsel, J. Fred Buzhardt. The notion that Ellsberg was a "prime mover" was to be abandoned in favor of the hypothesis of a subversive conspiracy of insiders (Halperin, Gelb, Warnke and others), already victims of Nixon-sponsored wiretaps. And if the break-in produced usable "negative" material, it should be released through a Congressional investigation, not by press leaks. (This last was the contribution of White House aide Patrick Buchanan.) Plumber Egil Krogh in a recent press interview has solemnly averred that this entire project was presented to him by the President as a "matter of the most urgent national security." The break-in was intended not for any squalid smear purpose, but to verify a hypothesis that Ellsberg was "involved with a foreign power" in an intrigue to damage President Nixon's peace with honor strategy. Krogh never explained how Ellsberg's emotional problems could throw light on this thesis.

The Boston investigation, first by bureau agents and then by the grand jury, fits well the objectives discussed in the memoranda and establishes that law enforcement was a flimsy cover. One person interviewed by bureau agents, Everett E. Hagen, director of the Center for International Studies at M.I.T., where Ellsberg had an office, reports that the questions he was asked dealt mainly with personal qualities: "I had the feeling that they would have liked me to say, 'Dan Ellsberg's a kind of odd person; he stands on his head in his office every afternoon.'"

FBI agents also interrogated Samuel Popkin, then a Harvard faculty member specializing in Vietnamese village life. The interview commenced on a curious note. As Popkin recalls, one agent began by making this observation: "We would like to ask you questions about Dan Ellsberg. We want to understand him and we need your help." The leitmotif of the interview was expressed through terms such as "emotions," "stability" and "psychiatric." "I had the impression the agents were trying to elicit negative comments about Ellsberg. . . . All sorts of questions were also asked me that didn't sit right like,



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'Does Ellsberg seem to be a nervous person?' 'Is Ellsberg emotional?' 'Is Ellsberg erratic?'—questions that at the time I thought were there to impugn the person, to try to paint him as a neurotic, or a crazy person, or a person with a grudge or a vendetta."

After unsuccessful attacks on his subpoena, Popkin appeared before the grand jury on August 19. "My first contact with the manipulative side of the grand jury," he recalls, "came when I asked the prosecutor, 'May I please be told the subject of the matter under inquiry?'

"The prosecutor reared up at me and gave a long lecture in a very stentorian voice, saying: 'The judges just told you that you may not ask this question, to appear here immediately and testify. Please don't keep these people waiting. Why are you trying to hold up the process of justice?'

"Not having immunity, I immediately took the First, Fourth and Fifth Amendments on totally trivial elementary questions: 'Do you read the *Boston Globe*, *The New York Times*?' "

But Popkin was soon confronted with more sensitive questions and unsuccessfully sought a protective order freeing him from the obligation of exposing confidential sources. His ordeal stretched on through the rest of 1971, as other subpoenas were dropped for a variety of reasons, including a deficient government denial of wiretapping in the cases of three other witnesses.

On January 18, 1972, Popkin again refused to testify, this time because of uncertainty over the continued validity of a previous grant of immunity. Finally, on March 29 he was held in contempt for having refused to answer seven questions before the grand jury two days earlier.

In his testimony, Popkin denied all knowledge of who might have possessed the Pentagon Papers before their general publication the previous June, or how they were distributed to the press. An unofficial transcript of the proceedings (printed in the *Harvard Crimson*) reads in part:

*Q.* Mr. Popkin, more specifically, do you know if someone possessed what is now known as the Pentagon Papers in Massachusetts other than to the extent you have previously testified?

*A.* May I see my lawyer?

*Q.* Mr. Popkin, as you know, a witness has the right to see his lawyers only on serious questions. You have been out of the room twice already for periods as long as ten minutes. You are now asking permission to leave the room for a third time. Is this necessary?

* * *

*Q.* Mr. Popkin, do you recall an immediate reaction that was formed in your mind upon hearing about original stories in *The New York Times* about who may have been the source?

*A.* I request permission to see my counsel.

*Q.* Mr. Popkin, how can your counsel be of use in this case? We're asking you about your immediate reaction.

*A.* I request permission to see my counsel.

*Q.* Mr. Popkin, you are being asked about your immediate opinion, how can your counsel be relevant?

*A.* I request permission to see my counsel.

*Q.* Mr. Popkin, you are stretching things for this grand jury. Your exits from the room have been ranging about five minutes. This is an inconvenience for the grand jury.

Popkin eventually gave answers to these questions, after intense intimidation and harassment by the prosecutor. However, he refused absolutely to divulge to the jury his "opinions" about who might have had access to the documents.

*Q.* Mr. Popkin, perhaps I should rephrase that question. What is your opinion as to persons you believed possessed the Pentagon Papers in Massachusetts prior to June 13, 1971?

*A.* Is this grand jury really asking me to violate confidences necessary to my research, simply to discover my opinion?

*Q.* The grand jury does not answer questions.

Washington Post

*'It Doesn't Exist—and Besides, He Doesn't Have Anything to Do With It'*

*A.* I respectfully decline to answer this question on the grounds that it violates my rights under the First Amendment to freedom of press, assembly and speech.

He also refused to divulge the contents of conversations on which he based such opinions:

*Q.* The question was prior to June 13, 1971, what was your knowledge as to the persons who participated in making the study?

*A.* May I be advised as to the pertinence of that question to the subject under inquiry?

*Q.* No, you may not.

*A.* My only knowledge of that answer comes from scholarly research.

*Q.* What is that knowledge?



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*A.* I respectfully decline to answer that question on the grounds that it violates my rights under the First Amendment to freedom of the press, speech and freedom of assembly.

*Q.* Is the knowledge derived in part from conversations you had with others? Who were the persons you interviewed to acquire this knowledge of who participated in the study? When and where were the conversations in which you acquired knowledge as to who participated in the Pentagon Papers study? Forget that.

*A.* The persons I acquired this knowledge from were interviewed in the course of my scholarly research.

*Q.* The question was who were the persons you interviewed to acquire this knowledge.

*A.* I respectfully decline to answer this question on the grounds that it violates my rights under the First Amendment to freedom of press, freedom of speech and freedom of assembly.

In the end Popkin refused to answer four questions seeking his opinion on who had had copies of the Pentagon Papers and how he had formed that view. He declined to answer two additional questions about how he had learned who had originally written the official study. The last unanswered question was whether he had discussed the study with Daniel Ellsberg, whom he knew professionally.

The danger of such a fishing expedition was evident. The Harvard faculty adopted a resolution urging "restraint" in grand jury inquiries and asking that the government show a strong need before putting such questions. It warned that "an unlimited right of grand juries to ask any question and to expose a witness to citations for contempt could easily threaten scholarly research." Twenty-four other scholars filed affidavits on Professor Popkin's behalf.

In May 1972, the First Circuit Court of Appeals in Boston upheld Popkin's right to refuse replies to the four questions having to do with his opinions of who might have had copies of the papers. One circuit court judge went so far as to label some of the questions "repugnant." Another judge simply said they were "badly phrased." But the court ruled that the others were proper questions, and required Popkin to answer them, although only "to the extent that the persons were not government officials or other participant-sources." In other words, Popkin was still forced to disclose the names of other scholars with whom he had discussed the Pentagon Papers, and from whom he may have learned the names of participants in the study.

This left Popkin near the end of his rope. On November 10, the Supreme Court, by an 8-to-1 decision (Douglas dissenting), refused to delay the execution of his contempt judgment. On November 16, Popkin filed stipulations offering to answer the questions, but only if he would not be forced to compromise his confidential sources. This offer was rejected by the Court of Appeals and on November 21, 1972, Samuel Popkin became the first American scholar jailed for protecting sources of information.

One week later, the government suddenly decided to dismiss the grand jury, which had been scheduled to run another six weeks, and Popkin was released. The decision came after Derek Bok, president of Harvard University, had joined the case to argue in Popkin's favor, and after Daniel Steiner, general counsel to the university, had met in Washington with A. William Olson, then head of the Internal Security Division, to urge that some way be found to release Popkin as soon as possible. Throughout Popkin's long ordeal, the prosecution continually asserted that the grand jury was investigating in good faith into the commission of federal crimes, and that the questions at issue were necessary to that investigation. Judges routinely accepted that claim.

## The Grand Jury Chain

The pursuit of Ellsberg was layered in falsehoods —to grand jury witnesses and their lawyers, judges, the media, even to the Watergate committee. Such deceptions became inevitable when intelligence sanctions were deployed against Ellsberg outside the law-enforcement process. Intelligence, of course, routinely draws upon the arts of deception: "covers" to prevent discovery of the action, the identity of the participants, or the source of the operation.

Intelligence covers of the sort described above are functional. But domestic political intelligence practices, unless required for a vital purpose, are unconstitutional and in a democracy repellent. Another layer of deception is therefore needed, a normative or constitutional cover. And the more offensive the practice, the more strident and deceptive the justification. Such deception, to paraphrase La Rochefoucauld, is the tribute that lawlessness pays to constitutional democracy.

In the beginning was the Word; the strategy of deception rests on a foundation of euphemisms. The very term "plumbers" is a mask on reality. The burglary was a "surreptitious entry," preceded in Hunt's priceless euphemism, by a "judgment visit" or a "feasibility study." The official cover for the burglary is Aristotle's "invented terror"—the fraudulent claim of an imperiled national security. Moreover, this cover was exploited, not merely to justify the burglary but also President Nixon's suppression of the evidence of the burglary and his evasion of Judge Byrne's order for production of this evidence for weeks, until a threatened resignation of the Attorney General and his deputies forced his hand.

To give this claim of national security the indispensable panache of a foreign threat, the CIA was brought in for "support services," ranging from a wig to a psychological study. But the chief support role was performed by those indispensable heavies, the Russians. According to Krogh and Ehrlichman, the Presidential mandate to the plumbers and the burglary was triggered by the discovery that the Russian Embassy had been mailed a copy of the Pentagon Papers. But this contention is questionable: *The New York Times* began printing the papers on June 13, 1971. The plumbers unit was commissioned by a Presidential ukase (verbal of course) a week after publication began, and did not become operational until early July. Why couldn't the Russians simply clip the *Times*? What a naive question! There was, it seems, another version of the papers, containing supersensitive material not printed by the *Times*, and it was undoubtedly this collection which turned up at the embassy. Who are we to say nay to such



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a contention, or to be nagged by the suspicion that a copy of the papers was deliberately sent to the embassy as justification for the break-in—a routine tactic for a Hunt or Liddy?

But another serious difficulty plagues this argument. If any government agency would know about the Russian Embassy's mail, it would be the FBI, which deploys an incredible arsenal of surveillance weapons against the embassy. And where would the embassy's receipt of such material serve a vital function? Obviously there is one place where such evidence would be invaluable: at the Pentagon Papers trial before the U.S. District Court on June 18, 1971, and the argument on appeal on June 22. At both of these proceedings the government had a chance to offer support for its key contention that publication of the papers had threatened our national security, especially through the channel of foreign relations. The government could have made such proof in open court or, if it was necessary to protect sensitive national security matters, *in camera*. When the plumbers' contention was made public in May of this year, an inquiry was addressed to then U.S. Attorney, Whitney North Seymour, Jr., seeking verification. In a letter dated May 5, 1973, he replied as follows:

> I have since looked into the matter and am relieved to be able to report that apparently neither this office nor the court was deceived as to the information available to the government at the time of the Pentagon Papers proceeding here. I have not been permitted to see the actual reports, which are classified, but I have been advised by an official in Washington that the FBI had no information concerning the possibility of the Soviet Embassy having possession of the papers at the time we presented our arguments to the District and Circuit Courts. I should add that I have not been able to learn the actual extent or scope of the papers that may have come into the embassy's possession.

As national security transmutes common crime into noble acts, so at the same time the actors are changed from criminals (perjurers, forgers, burglars and the like) into patriotic heroes. That is why in his testimony Hunt sounds aggrieved that an ungrateful nation did not reward him more generously with "support money," or perhaps, as in one of his thrillers, "take care of its own." In this view, of course, the victims of his acts become villains, subversives with no rightful claim to legal redress.

"National security" has been used, not merely to gild a single isolated caper; it is the trademark, the signature as it were, of President Nixon himself. Small wonder that national security has become the Administration's chief justification for resisting an effective investigation into its own affairs. In his May 22nd statement, the President used the term twenty-three times and "security" by itself thirteen times.

The standard model of this cover evades or represses dissent by claiming that it threatens our bargaining position abroad or that now is not the time, when negotiations are in so delicate a state, to rock the boat. Such covers have been used for a variety of purposes, from defusing the peace movement to braking the impeachment drive. Reliance on them naturally increases with the intensification of the President's domestic difficulties. The more he is without honor in his own country, the more he becomes a "prophet" abroad. This process ultimately gives Nixon such a stake in foreign conflicts that he is tempted to provoke them. Certainly a persuasive case can be made for the view that this motivation contributed to the President's unilateral decision to call a worldwide military alert in the middle of the night of October 24-25, when the movement to impeach him was cresting. To the obvious danger of such provocation must be added the loss of credibility involved in crying wolf.

The activation of the plumbers and the burglary required the fabrication of yet another cover. What bothered many Americans more than the question of power was the fact that President Nixon had by-passed the FBI. But the Administration had prepared for this contingency. It would appear that the formation of the plumbers was forced on the Administration because J. Edgar Hoover was sabotaging the Ellsberg investigation. Ehrlichman testified that Hoover wouldn't allow his agents to interview Ellsberg's father-in-law, Louis Marx, because he was an old friend of Hoover. But documentary evidence established that Hoover and Marx had met only once, thirty years earlier. In addition, Marx had, in fact, been interviewed by bureau agents before the plumbers were commissioned by the President. Nor was that all. FBI agents had twice sought interviews with Dr. Fielding, once on July 20, 1971, and again on July 26. Moreover, on August 3 Hoover had written Krogh fully committing the FBI to the Pentagon Papers investigation and, as we have seen in the memo of August 11, Krogh informed Ehrlichman of Hoover's communication that the Ellsberg investigation had the highest bureau priority. Covers come in all colors and sizes—even in reversible models. In 1971, the bureau's asserted apathy served as an Administration pretext for by-passing it. But, in the 1972 Watergate cover-up, the bureau was too active for the Administration's purposes and fear of leaks was used to conceal the Administration's sabotage of its investigations. The CIA, which in 1971 permitted itself to be compromised and used as a foreign intelligence cover, was reluctant to perform the same role in 1972, either for Watergate itself, or the Mexican (money-laundering) connection.

The Huston plan concentrated on student radicalism, an area in which Huston himself, a former national leader of Young Americans for Freedom, was considered an expert. Depicting the campuses as "the battleground of the revolutionary protest movement," he recommended the recruitment of informers in college groups, along with burglary, wiretaps and mail covers. Like Ehrlichman and others, Huston thought that the mere pronouncement of national security, unchecked by any judicial evaluation, was sufficient to put the President beyond the reach of the law.

Mardian, appointed to head the ISD in November 1970, took over the war on radicals. His unit had especially close ties to Sullivan's FBI Division 5, and it is not surprising that it was to Mardian that Sullivan turned in the summer of 1971, to forestall the use by Hoover of the "Kissinger wiretap" tapes for blackmail purposes. Mardian was a red hunter of the old school, a mind of the 1950s with a provincial outlook somewhat



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unpalatable to the more "philosophically" conservative Huston, who once turned up his nose at a job offer from Mardian. But what Mardian lacked in finesse he more than made up in zeal. With the operational support of Division 5 and the collaboration of his field marshal, Guy Goodwin, he launched a series of grand jury probes against the Weatherman faction of SDS which served both as a cover for intelligence gathering and as a directly punitive attack on radical witnesses.

The first of the seven grand juries against Weatherman was called in Detroit. On July 3, 1970, acting solely on the testimony of an informer, Larry Grathwohl, it returned an indictment charging thirteen individuals with conspiring to bomb military and police installations in Cleveland, Detroit, Milwaukee and Los Angeles. Fifteen unindicted co-conspirators were also named.

The first major grand jury attempt by Goodwin to stage an extensive investigation occurred in Tucson in October 1970. In the course of those proceedings five individuals subpoenaed from Los Angeles were jailed for seven months for refusing to testify. On October 20, the grand jury indicted one John Fuerst for transporting explosives in interstate commerce. Fuerst had been named in connection with an overt act set forth in the Detroit indictment, although he was neither indicted nor named as a co-conspirator by the Detroit grand jury. The testimony before the Tucson grand jury makes it quite clear that it was primarily concerned with Fuerst, but that did not prevent it from developing a detailed and comprehensive picture of West Coast radical activities. The "cover" use of Fuerst for fishing purposes was emphasized by the fact that no additional indictments were issued after Fuerst's original indictment, despite the subsequent testimony of five witnesses.

In November 1972, another ISD grand jury was convened in Cleveland. On November 29, a California woman subpoenaed to testify there was given limited (use) immunity and then interrogated about bombings in Cleveland in 1970, involvement with SDS in Cleveland and her knowledge of various people in the area. She admitted knowing some of the people she was asked about, but was unable to answer most of the questions, and so testified. The focus of this grand jury was the Weatherman underground and again Fuerst was used as a cover for an extensive interrogation about activities charged in the Detroit indictment as "overt acts." Indeed most of the evidence gathered in Cleveland was developed for use in the Detroit trial.

In fact it was only a week after the appearance of the California witness before the Cleveland grand jury that a Detroit panel handed up a new indictment against fifteen people in Weatherman, superseding the original indictment with similar charges now fleshed out with evidence gathered by the grand juries in other areas.

The superseding indictment in Detroit did not put an end to this seesaw process. Early in January 1973, the Cleveland grand jury subpoenaed two witnesses, one of whom had testified in November. In this round of questioning she was presented with a rerun of the earlier questions, despite the fact that it was the same grand jury. The second Cleveland witness refused to answer a number of similar questions on the ground that they were based on illegal wiretaps. In response, the government dropped her subpoena rather than disclose its

*'Police!'* *'FBI!'*



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sources. On January 10, two days later, indictments were handed down in Cleveland against three of the Detroit defendants. These indictments were based on the testimony of an FBI agent; the two witnesses had been called solely for the purpose of developing information to aid in the prosecution of the new Detroit indictment.

The Cleveland indictments were simply moves in a game. The acts listed in these indictments are identical to those charged by the Detroit grand jury. In an effort to provide a justification for the grand jury probe and to mask its true purpose the prosecution "indicted" three individuals who were underground and thus unlikely to come to trial. It is also noteworthy that the indictments were returned only two days after the Detroit defendants sought to intervene in the Cleveland proceedings on the ground that the Cleveland grand jury was being improperly manipulated to develop evidence for use in Detroit.

Another grand jury proceeding which was activated to develop testimony for use in the Detroit trial began in Madison, Wis., in February 1973 when two women, each named as an unindicted co-conspirator in the Detroit indictment, were subpoenaed. By a familiar coincidence, one of the witnesses was asked about activities which are described as overt acts in the Detroit indictment. When she refused to testify, the government sought a grant of immunity from prosecution and an order compelling her to testify. At the immunity hearing, the judge asked the government what the purpose and scope of the grand jury's inquiry was. The government refused to answer, insisting that it had no obligation to reveal the purpose of the grand jury's activity. The judge then refused to grant immunity or to order testimony. He ruled that the Internal Security Division attorney was abusing the grand jury process.

Still another front in the grand jury offensive against the SDS radicals was opened in the fall of 1972 in San Francisco with a volley of eleven subpoenas for a group of individuals, most of them strangers to one another, scattered all over the United States and Puerto Rico. From the questions asked in San Francisco by Goodwin and his assistant, it became clear that this investigation sought information about links between fugitives and techniques for the protection and support of persons in the underground. Subjects covered included mail drops, welfare and food-stamp acquisitions, transportation, housing arrangements and travelers' checks. Some questions were asked about the bombing of a San Francisco police substation in February 1970. Even at the time, however, police and the local press did not attribute the bombing to Weatherman. It was generally believed to have been an isolated event with no organizational link. An intensive investigation for more than two years had yielded no suspects. The questions about the bombing seem to have been a smear technique, attempting to link the witness with terrorism, with the expectation that the questions would be made public when read at the subsequent immunity and contempt hearings.

Other questions involved a San Francisco residence, referred to in the Detroit indictment as having been rented by one of the defendants for the illegal purpose of storing explosives. Again, a deliberate abuse of the grand jury process. But when a number of Detroit defendants sought to intervene, the government insisted that the development of evidence was not the "sole or dominant purpose" of the investigation. The San Francisco proceedings were marked by abrasive confrontations between the prosecutors and the witnesses. In many instances the witnesses were sharply limited in consulting counsel.

One witness, John Davis, brother of Chicago conspiracy defendant Rennie Davis, challenged his subpoena on wiretapping grounds. The government admitted that it had wiretapped Davis, but denied that the information which it had garnered was used to prepare either the subpoena or the questions. A hearing was then held to determine possible taint—whether the questions asked of Davis were based on wiretaps—and the government submitted approximately 250 pages of logs of wiretapped conversations, and 2 pages of questions. The logs indicated that Davis had been "overheard" on numerous occasions in 1969, when he used telephones in the national office of SDS.

On June 1, 1973, three days before Davis' next scheduled appearance, the government dismissed the subpoena. Davis and another witness who had been subpoenaed in October but never questioned, commenced a civil suit asking an injunction to prevent the grand jury from questioning witnesses until the National Commission on Individual Rights is in operation. The commission was created in the 1970 Organized Crime Control Act, the same Act which created "use" immunity. It has never met because President Nixon has failed to appoint the seven members he is required to name. Minutes before the witnesses were to appear in court as plaintiffs, the government scrapped the subpoenas and contended that the civil suit was therefore moot.

In all, seventeen witnesses were called in the San Francisco probe, beginning in September 1972. Of these only four actually testified, and one other was jailed for thirty days for refusing to testify, although his conviction was later reversed on appeal. Another witness was also held in contempt, but was ultimately not required to testify because the government refused to comply with a court order that he receive a transcript of his testimony. The subpoenas of the other witnesses were dismissed.

After all the smoke had cleared, only one person—a fugitive Detroit defendant—was indicted as a result of the grand jury's work. Indeed, despite the government's disavowals, the main purpose of the San Francisco proceeding appears to have been, once more, to dig up evidence for Detroit. None of the four witnesses who testified knew anything at all about the indicted defendant; his indictment was thus the result of information already in the government's possession.

Like Watergate itself, the grand jury sessions described here and in the January 1972 article form a pattern. It does not mean too much to discover that this or that grand jury was driven to excess by a zealous prosecutor, that rudeness and overreaching deprived a particular witness of his or her rights, or that in an isolated instance the subpoena power was used to collect evidence for trial after the indictment was returned. In exercising its proper function in good faith, a grand jury



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may step over a line; it is an abuse inherent in all institutions whose boundaries are not rigidly fixed. The remedy for such infractions is judicial redress or more scrupulous public servants. But the "whole" which here is so much greater than the sum of its parts is usurpation of power, the planned and manipulative rigging of an instrumentality for reasons unrelated to its basic purpose.

Nothing so clearly demonstrates this use of the grand jury for intelligence purposes as the government's repeated failure to remove from subpoenas and interrogations the claimed taint of illegal tapping. There is hardly a grand jury proceeding—Boston, San Francisco, Vermont, Cleveland, Harrisburg and Detroit, to name only a few—where subpoenas have not been dismissed because of alleged warrantless tapping. The August 11, 1971 plumbers' memorandum to Ehrlichman about the Ellsberg project, contains the notation, "It seems unlikely that Barnet, Raskin and Gifford will be called [as grand jury witnesses] because they have been overheard." (This last term is a modest entry in the surveillance dictionary of euphemisms.) In the Detroit case, the sheer bulk of the secret tap logs is staggering: 12,000 overhearings for nine months—and this from only one source, SDS headquarters in Chicago. In many cases, as in Seattle and Detroit, the government balks at disclosing the contents of the taps; it then seeks dismissal out of sheer embarrassment, claiming that national security would be "compromised" by further disclosure, or insisting that the challenged practice took place in hot pursuit of "foreign intelligence," an allegation almost invariably based on proofs so tortured as to make Ehrlichman's defense of the President's power to burglarize Dr. Fielding's office a model of persuasive reasoning. Rather than permit a profanation of the sleepless struggle to protect us from foreign foes, the government drops the case. The fact is that the Administration has failed utterly to develop a "foreign intelligence" sanction for domestic surveillance —catnip for every spy master since Walsingham. In 1970 the President commissioned the CIA to ferret out the foreign support for domestic protest, only to be told that it was an empty burrow. This report made his claimed need for otherwise illegal surveillance factually improbable and, irony of ironies, his détente policy made it politically incredible.

## Two Hats for Mardian

Lawyers for the Detroit Weatherman defendants, in preparation for a "taint" hearing ordered in a sweeping ruling by Judge Damon Keith last June, have uncovered powerful evidence that the ISD grand juries are a link in a surveillance network. Investigation corroborates documents submitted by John Dean to the Watergate prosecutor and Ervin committee (some of them were classified and only partially released to the press) that in the fall of 1970 the operational aspects of the Huston plan, from wiretaps to break-ins, were implemented by a White House-sponsored agency which had two covers: it was located in the Department of Justice as a part of the Internal Security Division and it claimed to be nonoperational, merely a conduit for intelligence generated by others. Its cover name was the Intelligence Evaluation Committee (IEC), but despite its interagency format (FBI, NSA, CIA, DOD, etc.), its *de facto* chief was Robert Mardian, who wore two hats: law enforcement and intelligence. Both operations were directed at the same organizational targets—SDS, Panthers, VVAW, Weatherman, etc. The linkage is plainly demonstrated by the admitted "almost daily" use of highly restricted ISD intelligence files by CREEP's security chief, McCord, and by the fact that the lawyers for groups targeted by the ISD for law enforcement were, as we shall presently show, systematically afflicted by office burglaries and fires. Also revealing is the unusually close relationship between ISD litigation chief, Guy Goodwin, and intelligence sources. For example, he maintained continuous contact at the investigative level with Larry Grathwohl, an FBI informer in the Detroit case, and with informer William Lemmer in the Gainesville (VVAW) case. The Gainesville case, at the trial stage, provides an extraordinarily vivid illustration of the willingness of the ISD to get into bed with the most squalid informers and provocateurs. This promiscuity contrasts with the conventional role of the prosecutor, which is to test and evaluate data developed by investigators. But most important is the dominant use of ISD grand juries as an investigative tool and as a means, by compelling testimony through grants of immunity, of laundering evidence that has already been illegally obtained through intelligence.

What is less clear are the mechanics of the plan. Who organized the burglaries, mail interceptions, wiretaps and similar intrusions? Who designated the targets, recruited the operatives and instructed them what to look for? Although the FBI has, through a single affidavit of agent Calvin Clegg in Washington, denied that it "possesses" (i.e., as of the summer of 1973) records reflecting such capers, it is the prime suspect as chief wiretapper—a very expensive, labor-intensive form of surveillance. Its field operatives certainly included urban red squadders—that is a matter of record—possibly recruited by New York City BOSS veterans, Caulfield and Anthony Ulasewicz. [See "New York's Red Squad: BOSS Is Watching" by Claudia Dreifus, *The Nation*, January 25, 1971.] Ulasewicz himself may have lent a hand from 1970 to 1972, a period when he admits being busy in intelligence matters which he can no longer recall. Since at least 1970, the bureau has developed and funded a program, furthest advanced on the West Coast, for acquiring intelligence through paid informers run by local police units. This collaboration, quite visible when a particular organization (SDS, Venceremos, Revolutionary Union) becomes a priority target, permits the FBI to harvest the fruits of illegal surveillance while preserving "deniability." There are also indications of interagency sharing of intelligence resources made available by the Treasury Department's Alcohol, Firearms and Tax Division, an agency with which first Liddy and then Caulfield had important ties during the period in question. Urgently needed in this context is a thorough Congressional probe to fix responsibility for this shocking (and foolish) attempt to use law enforcement as a cover for intelligence, an "option" which even Tom Charles Huston thought would come to a sticky end.

The ISD, understandably enough, could hardly afford the airing that Judge Keith had ordered. On October 13, the



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prosecution, having stalled and thrashed about for more than four months in an effort to evade compliance with the judge's order, finally threw in the national-security-*cum*-sensitive-foreign-intelligence towel and moved for dismissal. Detroit thus joined the series of cases which the ISD's Goodwin lost, largely because of a fatal clash between covert intelligence practices and the norms of law enforcement.

From 1970 until 1973, more than fifteen cases are reported in court documents of burglaries on the premises of lawyers for radical groups and individuals, and in a few instances on those of their clients. According to an affidavit filed by Weatherman lawyer Gerald Lefcourt, his office was twice burglarized; first in the fall of 1970 and again in the winter of that year. On April 12, 1970, a fire, classified "suspicious," occurred at his Manhattan office. Lefcourt said one of his files on Mark Rudd had been scattered about the office. Two burglary attempts were made at Lefcourt's New York City home between the spring of 1970 and the spring of 1971. Nothing was taken in the second break-in, so police were not notified. Of the first, Lefcourt says, a television set was found in the building lobby and was taken to a police precinct station, where he went to claim it.

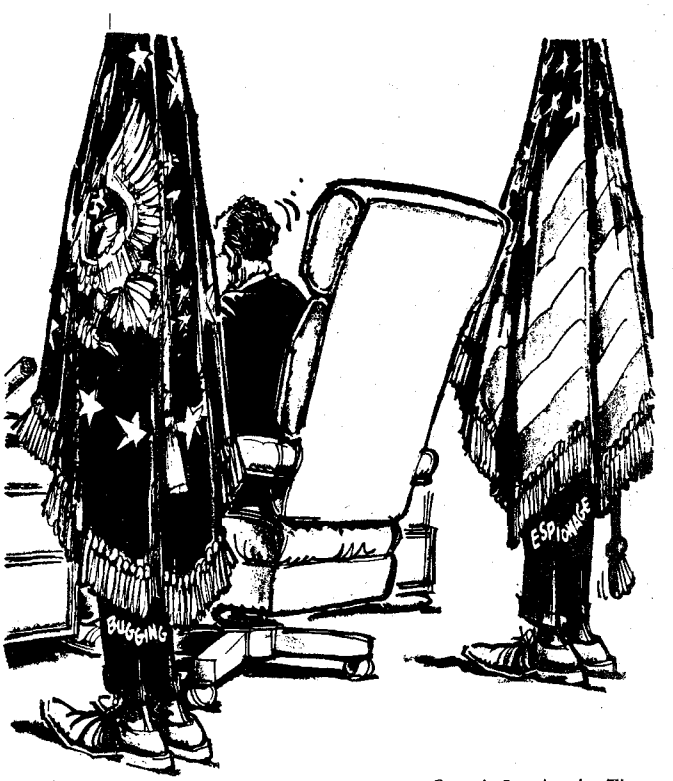
At the San Francisco office of attorney Michael Kennedy, burglars rifled files and scattered them about. The San Francisco police confirmed the break-in. During another burglary of his office, his briefcase was rifled. On August 19, 1971, the People's Law Office in Chicago was burglarized. Police confirmed the crime, and that items stolen included an electric typewriter, $50 in a cashbox and a shotgun. In a burglary at the law offices of Henry diSuvero on June 8, 1972, files were rifled. In addition, the offices or homes of other attorneys, including Charles Garry, Melvin Greenberg, Jeffrey Haas, Carol Scott, Lee Holly, Carl Maxey and Michael Lerner (counsel *pro se* in the Seattle 9 case), were entered under circumstances marked by a common pattern: the rifling or theft of files, with nothing else of value being taken.

An example of attempted mail interception is supplied by the July 23rd affidavit of a Chicago postman:

> I have been assigned to the Lincoln Park Station of the Chicago Post Office since 1968 as a mail deliverer.
>
> Part of my duties were to deliver mail to 2242 N. Bissell Street.
>
> I was aware that members of the People's Law Office staff including Jeffrey H. Haas, Courtney Esposito, Liza Lawrence and G. Flint Taylor, Jr. were living at and receiving mail at that address.
>
> On several occasions I was approached by men in plain clothes outside of 2242 N. Bissell Street who showed me badges which were sometimes of the Chicago Police Department and sometimes of the Federal Bureau of Investigation.
>
> These plain clothed officers asked questions of me about inhabitants of said house, took pictures of said house and watched said house.
>
> On several occasions I was approached and offered a job by some of these plain clothed police which I declined to accept.
>
> All of this occurred in the Spring and Summer of 1971.

Another insight into the *modus operandi* of the ISD network can be gained from two incidents, both involving attempts to develop evidence for the Detroit case. On April 24, 1970, the Chicago apartment of Martha Real, the cousin of Detroit defendant Mark Real, was searched illegally by Chicago's red squad Weatherman expert, Maurice (Maurie) Dailey. During this search, many items were seized, including Martha Real's personal address book, two sealed addressed letters, and alleged contraband consisting of several firearms. After the material was suppressed by the court as illegally seized, the record of her arrest was also expunged, pursuant to the court's order. The illegally seized items were then turned over to federal authorities and on July 9, 1970, Martha Real was subpoenaed by the Detroit grand jury.

When Miss Real first appeared before the grand jury she invoked her Fifth Amendment privilege in response to all questions. Thereafter, U.S. prosecutor Guy Goodwin and his colleagues successfully applied for an order granting her immunity from prosecution and requiring




Conrad, Los Angeles Times

*'When We Fail to Make the Criminal Pay for His Crime, We Encourage Him to Think That Crime Will Pay.'*

testimony. Goodwin then questioned Miss Real about the contents of the sealed and addressed letters illegally seized in Chicago, about other physical evidence illegally seized there, and about what was said in a tapped telephone conversation with a defendant in the Detroit case. That indictment recites an overt act which almost certainly was based upon material obtained from the illegal search and wiretap. In addition, by inducing Judge Keith to grant immunity, the prosecution made him an unwitting accomplice to laundering the illegally obtained evidence by compelled grand jury interrogation derived from this tainted source.



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Robert Swartwout, an unindicted Detroit co-conspirator also mentioned in connection with an overt act, was in the early part of 1970 detained and beaten in Chicago by Dailey and his partner. He was then told he was under arrest because he was wanted on a charge in Virginia and was taken, without process of any court, to the Chicago airport where a ticket was purchased for him with money taken from his person. When the plane landed at the National Airport in Virginia, Swartwout fully expected to be met by police, but no one appeared and he was never thereafter arrested or charged in Virginia on any warrant. Information that had been gleaned from him as a result of the Chicago beating turned up in the Detroit prosecutor's file.

### The Veterans in Miami

The attack on Weatherman personnel was triggered by a White House decision that they were a threat; the tactics we have described flowed naturally from that decision. This linkage between the urgency of dealing with a target and the grand jury process appears again in the case of the Vietnam Veterans Against the War. The Administration viewed the veterans' peace movement with special hostility: organized opposition by veterans to policies in Vietnam could, unless curbed, divide and weaken a vital Nixon constituency. The Watergate cover-up, according to testimony at the trial of the original Watergate defendants last January, attributed the expenditures of large sums of cash and the bugging of the Democratic National Committee to the need to protect the Republican convention from violent demonstrations, specifically by the VVAW. At that trial, Jeb Magruder testified that he had paid money to defendant G. Gordon Liddy, who was to uncover "the plans of potentially troublesome demonstrators around the country and at the Republican National Convention."

James McCord, also convicted at that trial, claimed that his activities were justified "to avoid the greater harm, which in this case would be violence directed to Republican officials," specifically by the VVAW. In his testimony before the Senate Watergate committee, McCord expanded on this charge. He discussed intelligence data furnished him by the Internal Security Division, which was regularly feeding such information to CREEP through Robert Mardian, who had left ISD to work on the Nixon campaign:

> *Q.* (*Senator Weicker*): Now I would like you to describe for me as best you can types of information, further detail, that you received from the Internal Security Division. . . .
>
> *A.* (*McCord*): One such report dealt with, as I recall, a funding operation that was reported in which the McGovern committee purportedly funded a so-called barnstorming tour of several members of the Vietnam Veterans Against the War on the West Coast, as I recall, starting from Los Angeles, Calif., and going up the coast. It came concurrently with some other information that that same group was planning violence at the Republican National Convention involving danger to, threats to life of individuals.

Although such reports were circulating through the Justice Department before the first Watergate break-in of May 27, 1972, the Internal Security Division did not even convene a grand jury until after the Watergate burglars had been caught and a cover story trumpeting the menace of VVAW had been concocted in the White House.

When the grand jury did meet, it was accorded an unusual amount of publicity. On July 11, while the Democratic convention was in progress and three days before any indictment was handed down, a spokesman for the Department of Justice gave an interview about the case. He described the "pretty bizarre and destructive weapons" that VVAW members had allegedly purchased, leading to headlines like "Bomb Plot Against GOP Probed" (*Atlanta Constitution*, July 19). Such publicity seems to have been floated in order to predispose the public to accept the subsequent cover-up story.

The grand jury and its indictments served the more immediate purpose of supporting the attempt to associate McGovern with more radical opponents of the war. One example is in a piece of GOP campaign literature distributed in Texas, listing "52 Reasons Why McGovern Must Be Defeated":

> 32. During the McGovern convention in Miami, plotters were conspiring to blow up the Republican convention. They were arrested and taken to Tallahassee where six have been indicted; but these dynamiters and gun shooters and plotters were glorified with the consent of Mr. McGovern in the convention.

The "glorification" was a resolution passed by the convention on Thursday, July 13, condemning "this blatantly political abuse of the grand jury to intimidate and discredit a group whose opposition to the war has been particularly moving and effective," and describing the grand jury as "an attempt by the Nixon Administration to deny the veterans their most fundamental constitutional rights to express their dissent and opposition to the war in Southeast Asia."

The political motivations for the VVAW grand jury are confirmed by its timing. The VVAW and many other anti-war groups had been planning a series of demonstrations at both of the Miami conventions. But on July 6, three days before the Democratic convention opened, Guy Goodwin sent out the first batch of twenty-three subpoenas. All of those subpoenaed were members of VVAW; almost all were either regional, state or chapter coordinators for the organization. They were subpoenaed from all over the Southern United States on July 6, 7 and 8 to appear in Tallahassee the following Monday, July 10.

The initial defense motions to enjoin the proceeding, on the ground that it was a government effort to interfere with First Amendment rights, were quickly denied by the district court and the Court of Appeals. Most of those subpoenaed were then called before the grand jury, asked preliminary questions (name, address) and eventually excused, after being held under subpoena 500 miles from Miami for the entire week of the Democratic convention. Several were called back for further questioning, and refused to answer after being granted immunity. Four were cited for contempt on Thursday, July 13, without notice of a hearing. That evening the grand jury



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voted to indict six VVAW members for conspiracy to disrupt the Republican convention, scheduled for late August.

Five days later the Court of Appeals found that the original contempt citations came after a "nonhearing," and remanded the case to the district court for a second contempt hearing, this time with notice, formal reporting of the proceedings and argument—all of which had been disregarded earlier. The hearing was held, and by August 7, the four vets were back in jail for civil contempt, having been denied bail by the district court. They remained imprisoned for a month, until bail was set by Supreme Court Justice Douglas, whose ruling dealt with two issues:

> This application for bail has previously been denied by my brother Powell [after appeal to the Fifth Circuit Court of Appeals failed] and that normally would be enough for my denial. But there has emerged a troublesome question concerning electronic surveillance of petitioners' attorneys on which I think a hearing is required. . . .
>
> Moreover, I am deeply troubled by the charge that enough evidence had been found to sustain an indictment, making colorable the use of the grand jury for other purposes. . . .

The six indicted were arraigned in Tallahassee on August 24, the last day of the Republican convention. On October 18, 1972, although none of those subpoenaed had been recalled before the grand jury, a superseding indictment was issued. The subpoenas of those who had been imprisoned for contempt were eventually dropped by the government, after the Court of Appeals reversed their contempt citations due to inadequate government denial of wiretaps of their attorneys. Last September, the trial jury acquitted all of the defendants on all counts. In the course of the trial itself, defense attorneys alleged that they had been bugged. [See "Justice in Gainesville: The Real Conspiracy Exposed" by Fred J. Cook, *The Nation*, October 1.)

## Camden and the Irish in Texas

The twin themes of political motivation and oppression are also prominent in the Camden, N.J. grand jury probe. In August 1971, twenty-eight Catholic activists, while engaged in a raid on the local draft board, were arrested by a corps of more than eighty FBI agents. Kept fully apprised for weeks in advance by a provocateur, Robert Hardy, the FBI not only captured the raiders red-handed but had hundreds of photographs of earlier casing activities, dozens of tapes of intercepted walkie-talkie conversations, and boxes of charts and maps confiscated in simultaneous raids on the night of the arrests. Despite this surfeit of evidence, a grand jury investigation was launched after the arrests to obtain intelligence about other "actions" of the Catholic Resistance and perhaps to develop leads for the still unsolved "liberation" of documents from the Media, Pa. bureau office the previous year.

On September 24, 1971, Goodwin's first witnesses, Pat and Bruce Grumbles, appeared before the grand jury. Both refused to answer any questions, citing a variety of constitutional claims. Thereafter, in mid-November, they were granted immunity and later jailed on civil contempt charges for refusing to testify. After the couple had spent more than six months in prison, they sought release in the district court, on the ground that the grand jury had been inactive since their confinement. The government hastily subpoenaed five new witnesses for June 27, 1972, and asserted that the investigation was continuing. Attempts to quash these subpoenas, with objections to the government's use of the grand jury to acquire evidence for the already pending indictment, failed. However, despite the government's assertions, these five were never recalled before the grand jury.

On February 26, after fourteen months in prison, they tried again. The trial of the Camden 28 had begun a few weeks before, but the term of the grand jury was not due to expire until the end of March. It was clear that the Internal Security Division intended to keep the couple in jail until the end of the term, despite the fact that the grand jury investigation had long since ended. The petition for release argued that continued incarceration would simply be punitive. The district court agreed, ruling that a jailing for civil contempt could be cut short when a continued jailing became punitive, rather than an inducement to testify.

Pat and Bruce Grumbles had served fourteen months, the longest contempt jail term served by any witness before an Internal Security grand jury. The previous record was held by the five witnesses in Tucson in 1971, who were confined for seven months. Upon their release at the expiration of the grand jury term, they were immediately re-subpoenaed. At that point they capitulated and testified, commenting that the government apparently had the power to keep them in jail for life. Mr. and Mrs. Grumbles were somewhat luckier; despite government threats, they were never subpoenaed again.

On May 24, the Camden defendants were, like the Gainesville group, acquitted on all charges, despite the fact that they admitted participation in the raid. The jury's verdict reflected the acceptance of two defense claims. The first was that Hardy, the FBI informer, had with the bureau's approval and funding provocatively implemented a raid plan which had already been abandoned by the defendants. That, of course, is a crude secret police tactic. The defense also charged that the bureau, by refusing to intervene until the draft offices were actually entered and the files destroyed, had deliberately escalated into graver substantive crimes a situation which at best would have rated a conspiracy charge.

Hardy testified that the bureau had agreed to make conspiracy arrests during a "dry run" of the raid a week prior to the actual event, and the bureau did deploy eighty agents at the scene when the raid was in this inchoate form. But the appointed time came and went and no arrests were made. Hardy's control agent, Michael Ryman, said in response to Hardy's protests that someone at the "Little White House" in San Clemente had canceled the arrangements. There could only be one reason for this cancellation—the political need for more serious charges. This conclusion is supported by the fact that, even on the night of the raid, the fully prepared arrest party made no move until the action was completed. Although Ryman sat in the courtroom throughout Hardy's testimony, the prosecution did not put him on the stand,



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a failure which, the judge told the jury, gives rise to an inference that Ryman was unable to contradict Hardy (the "missing witness" rule).

One proceeding, though not directed against the American Left, has finally served to mobilize liberal opinion against the Nixon Administration's abuse of the grand jury. On June 21, 1972, twelve Irish-Americans were summoned from New York to appear before a grand jury in Fort Worth, Tex. The subject of the investigation was to be the purchase and transportation of Japanese-made arms to the Irish Republican Army by the American-based Irish Northern Aid Society.

It appears that the investigation was undertaken by the Administration on the request of the British Government. According to newspaper reports, British soldiers had seized a cache of weapons used by the IRA and determined that the weapons had come from the United States and Japan.

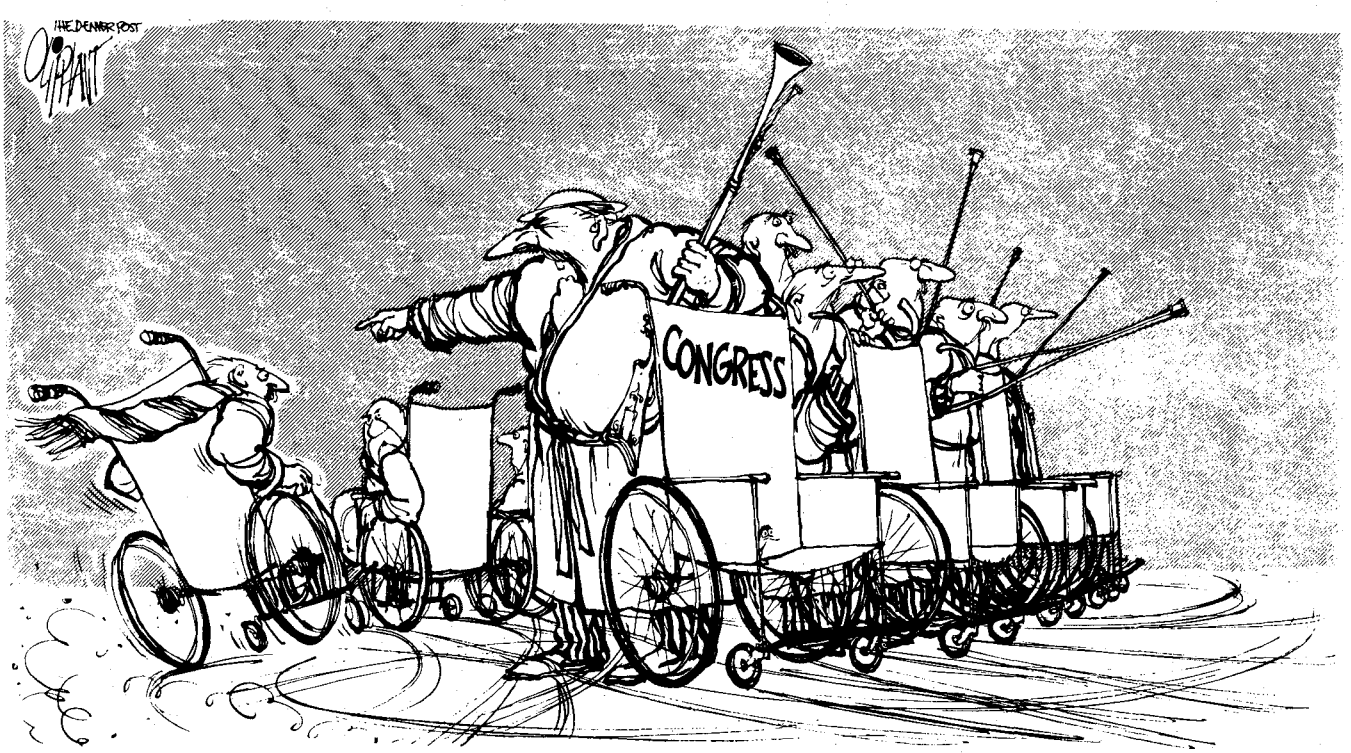
Seven of the subpoenas were either dismissed or suspended indefinitely before the witnesses were called. Four of these were "high officials" in the Irish Northern Aid Society, the organization allegedly under investigation. The remaining five witnesses had no official connection with the society. Within a week of receiving their subpoenas in New York, the five appeared before the grand jury in Texas. They refused to testify and were given immunity protection. The questions put to them related solely to persons and places in the New York City area, Texas being roped in with blunderbuss queries of the sort that began, "Have you ever known any person in New York, Texas or elsewhere . . .?" Given the intensely political nature of the investigation, the predictably outraged response of the Irish community in New York, and the fact that 1972 was a Presidential election year, it seems reasonable to conclude that the grand jury was convened in Fort Worth because it is not an Irish community and thus would generate little or no local protest.

The five witnesses all refused to testify under immunity and were jailed on civil contempt citations on June 20, 1972. On August 3, their contempts were affirmed by the Court of Appeals, and they remained in the county jail in Texas. The refusal to release the five was surprising in light of the government's admission—made for the first time in its appeal brief—that one attorney for the witnesses had been overheard by electronic surveillance, supposedly conducted pursuant to a court order.

The conversation overheard occurred on June 17, four days after the subpoenas were served, two days before the witnesses were to go before the grand jury and while they were consulting with counsel. Without granting oral argument, without even waiting for a brief on the question from the witnesses, the Court of Appeals affirmed the contempts, refusing to order disclosure of the overheard conversation to the witnesses and their lawyers who charged a violation of the attorney-client privilege and right to counsel.

Another grand jury, also dealing with an aspect of the arms shipment investigation, was convened in San Francisco in the fall of 1972. There, too, a witness, Robert K. Meisel, has been jailed on contempt charges since January, with a short period of freedom on bail, granted by Justice Douglas but later denied by the full Court. It is likely that he will remain in jail until the expiration of the jury's eighteen-month term (which may be extended), even though the grand jury is inactive, having heard only one witness since Meisel's incarceration. Meisel has justifiably charged that the life of the grand jury has been artificially prolonged solely to punish him.

Significant political support had been mobilized for the five Fort Worth witnesses. Senator Kennedy filed an




*'Get Those Wheelchairs in a Circle—He's Comin' Back!'*



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*amicus* brief in the Supreme Court, asking that the five be released on bail. Eight New York members of Congress sent a telegram to then Attorney General Kleindienst, urging him to "wind up this apparently trumped-up proceeding promptly and allow these witnesses to return to their homes and families." A meeting was set up between the Representatives and Justice Department attorneys, but was canceled at the last minute by the department. On September 15, 1972, Justice Douglas ordered that bail be set for the "Fort Worth Five" (Justice Powell had denied a similar motion) because of the government's admission of electronic surveillance. The bail conditions set by the district judge were $100,000 bond, confinement within the district except upon written permission, and lifting of passports. The Fifth Circuit ordered the amount reduced. In finally letting the witnesses out on September 25 for $10,000 or less, the trial judge struck a strong nativist note: "All of the witnesses are foreign born. Three of them are still citizens of foreign countries. The thought occurs that they ought to go back to where they came from if they cannot stomach the fundamental principles upon which this country is founded."

On January 22, the Supreme Court refused to review the Court of Appeals decision upholding the contempt citations. With that denial, bail for the five was revoked and they were returned to jail in Texas. They remained there for more than seven months until again released by Justice Douglas because of additional evidence of government violation of the attorney-client privilege by illegal wiretaps. Finally, on November 7, federal Judge Leo Brewster dismissed the contempt charges against the five. However, federal authorities could recall them to testify before another grand jury. If that happened, the case would probably go to the Supreme Court.

Political support for the witnesses was widespread. Senator Kennedy, Bronx Borough President Robert Abrams, and the families of several of the men held a press conference in New York in February, asking for their release from jail. On March 13, Rep. Bella Abzug held a public hearing on a resolution she had introduced demanding that the Justice Department furnish an explanation of why it had subpoenaed the five men.

Senator Kennedy testified at the hearings and issued the strongest condemnation of the Justice Department's misuse of grand juries yet heard from a public official. His testimony aptly summarizes some of the abuses:

> Over the past four years under the present Administration, we have witnessed the birth of a new breed of political animal—the kangaroo grand jury—spawned in a dark corner of the Department of Justice, nourished by an Administration bent on twisting law enforcement to serve its own political ends, a dangerous form of Star Chamber secret inquisition that is trampling the rights of American citizens from coast to coast.
>
> * * *
>
> [There is now an] all too familiar and mushrooming recent pattern of grand jury abuse and secret inquisition by Justice Department officials around the country, a practice raising serious questions in Congress and the nation about the fairness and legality of the department's current operations and about the very security of our fundamental freedoms and basic liberties.
>
> * * *
>
> And so it goes, as the Special Litigation Section of the Internal Security Division plies its trade, with its small army of grand inquisitors barnstorming back and forth across the country, hauling witnesses around behind them, armed with dragnets of subpoenas and immunity grants and contempt citations and prison terms. These tactics are sufficient to terrify even the bravest and most recalcitrant witness, whose only crime may be a deep reluctance to become a government informer of his closest friends or relatives, or an equally deep belief that the nose of the United States Government has no business in the private life and views and political affiliations of its free citizens.

The Fort Worth case and the high visibility of the grand juries in the Watergate and Agnew investigations have finally stimulated a movement for grand jury reform. One series of proposals calls for a change in the Fifth Amendment's guarantee of indictment by grand jury prior to trial. It would allow Congress to specify certain crimes as indictable, and other crimes which could be prosecuted without indictment, on the basis of an accusation of a prosecutor.

But to limit the role of the grand jury in this way, or to abolish it altogether as other critics urge, would be to throw out the baby with the bath water. We need to reinforce and implement this guarantee of the Bill of Rights and restore to grand juries their proper powers by making it more difficult if not impossible for a prosecutor to usurp the power of the grand jury. Legislation to achieve this purpose has been proposed by the Coalition to End Grand Jury Abuse, an alliance of the National Lawyers Guild, American Civil Liberties Union, Unitarian Universalist Association, National Conference of Black Lawyers, National Emergency Civil Liberties Committee and several other groups. The coalition's proposal calls for the grand jury to vote on whether to issue a subpoena; whether to seek immunity for a witness, and whether to ask for a contempt of court finding if the witness refuses to testify despite his immunity.

Perhaps the single most important provision of the coalition-sponsored bill requires the court to obtain the written consent of the witness before an immunity order may be signed. Such a provision would allow the witness to continue to assert the Fifth Amendment privilege against self-incriminating testimony, if he so chose.

The bill would also eliminate narrow (use) immunity and re-establish full transactional immunity in the federal system; limit a contempt sentence if the witness has been jailed for contempt once before for refusing to answer questions about the same subject; require judges to instruct the grand jury fully about its power and rights; and strengthen the rights of witnesses in areas such as secrecy, venue and the right to counsel. And, certainly before drastic surgery is performed on the grand jury system, a thorough investigation of the ISD's role in undermining it is vitally needed. Such an inquiry would necessarily encompass an examination of the Administration's politicization of the Department of Justice and its transformation into a ministry of fear. A probe of this kind would not be confined to the past; recent events have demonstrated that the President continues to demand that the Attorney General shall subordinate all other interests to his political needs. □



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# BOOKS & THE ARTS

## Victim of the Autumn Chill

THE PRICE OF VISION: The Diary of Henry A. Wallace 1942-1946. *Edited, with an introduction, by John Morton Blum. Houghton Mifflin. 707 pp. $15.*

**BERT COCHRAN**

Of the remarkable group that made up Roosevelt's Cabinet and advisers, Wallace has come through most damaged in reputation. All the major New Deal personalities—Hopkins, Ickes, Morgenthau, et al.—have lost some of their earlier sheen because of the long swing to the Right in American politics. (Truman thought many of the people around Roosevelt were crackpots, an opinion widely shared then and thereafter among politicians and businessmen.) A declining prestige of liberalism and liberal spokesmen was climaxed, in Wallace's case, by the shattering of his position when he embarked on his rash 1948 adventure. The man who had been the standard-bearer of dedicated liberalism during the war years and for the first year of Truman's incumbency, became a figure of derision and scorn when he rejected the cold war and put himself in conflict with the liberal and laborite communities that had previously embraced him. At the time, either a head-on opposition to the cold war or an alliance with the Communists was sufficient to bury a functioning political leader. Wallace was involved in both.

"The irony of history," says John Morton Blum, "should have restored Wallace's reputation, but in the early 1970s he was still remembered more for his occasional fallibility than for his extraordinary foresight." This is a statesmanlike way of putting it. The reason "history" finds it difficult, if not impossible, to restore the Wallace portrait is that he was a split personality in his final incarnation. He could not make up his mind whether he was a prophet or a politico in the 1912 Teddy Roosevelt tradition. In either case, he showed execrable judgment. If he was a prophet enunciating great principles, he should not have compromised and sullied his crusade by an alliance with Muscovite- and Stalinist-oriented Communists. If he was a political leader, he should not have made an alliance that was politically disastrous. And if it is pointed out that without this alliance he could not have run a Presidential campaign, that should have warned him that he had to find less ambitious means to conduct his mission—at any rate, in 1948. Because he was confused about his role, misguided about his allies, and misjudged the political balances, Wallace—the one major New Deal personality who, in a time of hysteria and pusillanimity, had the inner strength to buck a reactionary tide and call for a policy of reason and compromise—made it easy for the Establishment spokesmen and press to overwhelm him with an avalanche of damaging disclosure, as well as misrepresentation and ridicule.

*The Price of Vision* consists of representative selections of Wallace's diary from 1942 through September 1946. Aside from these entries, Wallace left only fragments concerned with the controversy inside the Department of Agriculture in 1935, and his nomination for the Vice President in 1940, neither of which is included here. He kept no diary after his forced resignation from office. Thus his years as Secretary of Agriculture, as well as the crucial two years preceding the 1948 election, are not accounted for. Mr. Blum, the Yale historian, has tried to fill in the gaps with a fine, scholarly summary of Wallace's life and career. Because of the years that are not covered, however, the book inevitably has an unfinished character, as if we were reading the middle section of a publication in which the initial and final chapters were missing. Wallace's voluminous oral history memoir at Columbia University, as well as other papers, will be opened by the end of 1975; the Wallace family has also commissioned a biography; so if full documentation will help history along in this instance, the raw materials will soon all be at hand.

The diary—as it stands—makes good and informative reading. There are no new revelations, and the writing is pedestrian, but Wallace lays out his opinions, impressions, conversations, conclusions in a straightforward, candid manner so that details are filled in and information rounded out about events that by now are part of the period's history. As with other authentic accounts, we learn indirectly a good deal not only about the man but the epoch, the play of individuals as well as the political atmospherics. How do the notations tally with the portrait of Wallace that "history" has left us? There is no indication that Wallace was a half-mystic visionary unfit for the political game. On the contrary, he thrived in the reformer's environment, where the air was thick with figures and facts and projects and plans for human engineering and social amelioration. Some or many of the schemes were fanciful—what Clare Boothe Luce called "globaloney"; some fatuously assumed an eleemosynary purpose in American expansionism or investments in foreign countries. One can have a lot of fun, as Dwight Macdonald had in his earlier study, with Wallace's fevered Wilsonian rhetoric about the Century of the Common Man, taking pot shots at the contradictions of his positions, at the vacuity of his perorations. One can jeer at the stupidity of juxtaposing American political democracy with Russian economic democracy, or the solemn assurance that the Chinese Communists were agrarian reformers. But none of this represented some unique or distinctive Wallacian failing. Wallace was an authentic spokesman for the outlook of advanced New Deal liberalism—a social movement of substantial achievement as well as bombast.

Roosevelt was too canny to include the soaring pronouncements in his own speeches until others had tried them out, but his notions were no different. In the entry of October 14, 1942, in the course of discussing a speech Wallace was then preparing, Roosevelt is reported as having said to Wallace that he "might well bring out the extent to which Russian and American ideals were coming together, that the Russians had gone perhaps 40 per cent of the way toward making their system into a democracy, and that the United States had gone perhaps 40 per cent of the way in making our capitalistic structure more social, that now we are perhaps only 20 per cent apart." The "agrarian reformers" blooper, stemming not from Maoist dissembling but American ignorance, originated apparently with Lauchlin Currie, one of Roosevelt's administrative assistants who had gone on missions to China, and G. Martel Hall of the National City Bank—then unthinkingly repeated by Roosevelt and Wallace.

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(That did not mean that Roosevelt ever supported these "agrarian reformers" against Chiang Kai-shek. Talk was talk, and policy was policy. When our old China hands got into a fight with Ambassador Hurley they, and not he, went into exile.)

Wallace was not a natural politician, as he himself recognized. He was not gregarious. He did not establish rapport with people. He gave the impression of being abstracted, his mind miles away. He was not accepted as a member of the fraternity in the years he presided over the Senate. In the 570 pages of diary text in this book, the one "intimate" incident related has nothing to do with him, but reports a remark of Truman's:

> After the dinner at the White House was over and we were all standing talking, the President came up to a group of us, including Secretary Schwellenbach, Secretary Ickes and several others. He seemed to be in a very jovial mood and started out by saying that what he really ought to have been was not a President but a piano player in a whorehouse. Secretary Schwellenbach spoke up and said, "That would have been too bad because then we never would have known you!" The President rejoined, "Why be so high and mighty, as though you had never been in a whorehouse!"

As one might expect from one of Wallace's make-up, he lacked an intuitive grasp of the personal in politics, both of the intrigue and of the public relations hokum. It was not that he was unaware of manipulative techniques, or did not employ them occasionally. But his attention, his interest, his talent lay elsewhere. His flair, his sense of tactics, was deficient. He could propose to Roosevelt in March 1944, that he go on a trip to Russia in the next month or two—when the Vice Presidential candidate was to be decided on—and Roosevelt had to point out to him that a trip to Russia would not be good politics, that it would be better if he went to China by way of Alaska and Siberia. When the trip was announced, newspapermen naturally speculated that its purpose was to get Wallace out of the country in order to clear the field for a rival. But Wallace had his head full of pioneering projects and paid no attention. (Not that he would have been the candidate had he remained in the country—but he did not know that at the time.)

Roosevelt bamboozled him about the Vice Presidential nomination when he told him that he hoped it would be "the same old team," and that he would send a letter to the convention saying that if he were a delegate, he would vote for Wallace. By the time Wallace returned from his trip to China he knew that Roosevelt had wanted to ditch him, but he assumed naively that he had convinced the President that he really had the backing of the majority of the Democratic rank and file. He did not understand that Roosevelt was keeping time to a different score. After the Democratic convention, Wallace's friend, Joe Guffy, the Senator from Pennsylvania, told him that he was positive that the drive for Truman had come from the President, not from the bosses. Wallace recorded that "the hard thing for me . . . is to reconcile what the President said to me when I left on July 13 with what he later did." Too much should not be made of his gullibility, though; Roosevelt played such a devious hand in the matter of the Vice Presidency that even the veteran wire puller James F. Byrnes was taken in.

Wallace has been criticized for accepting Roosevelt's blows against the liberals in a meek Christian spirit, lauding the master more extravagantly after each betrayal. Here again Wallace was part and parcel of the liberal-labor establishment, reacting no differently than others. The New Dealers felt they had to go along with Roosevelt as the best leader available. They knew him and acted with their eyes wide open. After Roosevelt bounced Wallace off the Board of Economic Warfare, replacing him with Leo Crowley, the corporation executive, Wallace and his supporters felt that the President had betrayed the liberal cause. Over the telephone to Ickes, Wallace said that it looked as if the country was headed for a bipartisan American fascism. After Roosevelt's double cross on the Vice Presidency, the diary has references to FDR's "maneuvering tricks," his "brilliant improvisations" in giving individuals responsibility without power. But though so many of the New Dealers were highly critical of the wartime Roosevelt trajectory, they were hopeful that once the war ended the course would be righted.

Wallace's personal lacks and obtuseness notwithstanding, he was an impressive political personality who had become the accepted champion of the liberal-labor forces. He had ardor, dedi-

## 'MY DREAM OF PURE INVENTION'

*Nothing comes to a halt sleeping off*
*the highway. There is snow*
*on the ground in Harrisburg. Icicles hang*
*from eaves*
*the tired scenes unreel. Night comes*
*into its own*
*sidewalk cafes. The white safaris*
*open wings*
*in the Oriental Pyrenees. We seed the clouds*
*waiting for our lives*
*to fall on us. The marriage in Mexico a rumor*
*all that summer.*

*Around a potbellied stove*
*our hands warm*
*we check the positions of stars*
*pinned against the storm windows,*
*double back*
*towards Plum Creek where cattle drowse*
*in their snowy stalls.*
*All roads closed.*

*Remember winter in Berlin, the places we have been*
*together.*
*The bamboo forest*
*darkness whistles through,*
*travel folder lies*
*opened like accordions. The moon, too,*
*that first disturber of sleep.*
*This broken day an early sun recalls*
*the hands, everything cheap when we pretend*
*pulling away from the body.*

Madeline DeFrees



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cation, integrity and purpose. Compared to the other contenders around at the time, he was a big figure. What led to his undoing was less his personal deficiencies than the change in the political climate. An autumn chill had set in that was totally unsuitable for him and his kind of politics, certainly in the Presidential sphere. When he raised the banner of opposition in his Madison Square Garden speech, and found himself a private citizen, he had to reconcile himself to waging a long, difficult struggle on the lecture platform and in the restricted liberal press. That was not in keeping with his training—and not in the major American political tradition. Impatience and the chase for fast results are national traits. In trying to force a passage without an adequate vessel and crew he suffered shipwreck.

He proved to be more reckless and foolish than an Eleanor Roosevelt. He was also more farseeing and courageous. That's not Blum's epitaph for Wallace but mine. □

# Freud and Beckett Concurring

SAMUEL BECKETT. *By A. Alvarez. The Viking Press (Modern Masters Series). 148 pp. $5.95. Paper $2.95.*

**MARTIN LEBOWITZ**

The work of Beckett suggests the necessary surrender in our time of the categories of ethics to those of psychopathology. An earlier study by G.C. Bernard suggests that Beckett's characters uniformly display symptoms of schizophrenia, and in the present volume Alvarez defines Beckett's literary outlook as reflecting psychotic depression. The conventional literary activity of evaluating human personality with respect to moral standards has gradually yielded in this age to the influence of Freud and other writers on psychoanalysis, but in the novels and plays of Beckett every theme and occurrence both explicitly and by implication appears to have a pathological content. The author's preoccupation with the symbolism of Christianity, for example, notably the Crucifixion, is founded on a preoccupation with misery and suffering. The "original sin" of having been born, of living, which Beckett refers to in an early essay on Proust, is devoid of theological meaning. The pervasive concern with mythology in contemporary art and literature as a source or substitute for moral insight has given way, in Beckett's writing, to the unvarnished expression of disorder, frustration, impotence and futility.

According to Alvarez, Beckett is *the* artist of deprivation and desolation. Alvarez cites in particular the essay on Proust, which sets forth the themes of the subsequent novels and plays, as expressing "a message of undifferentiated gloom; he makes it sound as though the noblest human aspiration were to achieve the condition of B.F. Skinner's robots, conditioned out of human feeling by boredom." The point is, apparently, that we expiate the original sin of living by means of habit, another word for apathy or depression. Habit is the armor protecting us from whatever can be neither predicted nor controlled, the world of feeling and experience that guarantees suffering. The adequate avoidance of suffering is boredom. According to Beckett,

> Habit is a compromise effected between the individual and his environment, or between the individual and his own organic eccentricities, the guarantee of a dull inviolability, the lightning-conductor of his existence. Habit is the ballast that chains the dog to his vomit.

The analogy with Skinner's robots suggests, however, another vital point: the behaviorist's contradictory insistence upon intentional control on the one hand and, on the other, his mechanistic denial of purposive behavior. It is this circumstance—the absence of purposiveness, creative or even routine—that allows or necessitates the transition from a moralizing literature to one that is by implication existentialist, precisely to the degree that it concentrates upon pathology and infirmity. In this sense the world of Beckett is a culmination of the misanthropic rejection of sentiment—denounced as sentimentality—on the part of earlier literary traditions.

A further paradox arises from the essentially neurotic or sado-masochistic relationship of many or most of the author's characters, and the fact that the same spirit seems to characterize his conception of his own creations (paralleling his destructive attitude toward literature itself). Love, for example, appears in his writings only as an aspect of persecution, cruelty or inanity. In consequence, of course, morality is an impractical ideal, so that Beckett's conviction of the futility of hope and even of effort justifies Alvarez's characterizing his work as "existentialist." Indeed, Beckett—not unlike Kierkegaard, Kafka and Nietzsche—explicity says that it is precisely the human condition from which we suffer, for which there is obviously no cure.

It has been suggested by a number of critics that deprivation rather than depression as such is the emotional and intellectual ground of Beckett's writing. One evidence for this thesis is the extreme austerity and self-discipline of the style, described by Alvarez as a "transparent medium drained of all local and associative color . . . a neutral language without reverberations . . . breathless and bodiless." In addition, the Berkeleyan motto, *esse est percipi*, becomes for Beckett a belief in the hallucinatory nature of experience and of motivation: the solipsistic filling up of time with futile actions performed by an unreal self. This may be the metaphysical implication of Beckett's notorious shyness, and of the nihilism of some of his best characters: not to be seen means in one sense not to maintain a merely specious existence.

The novel *The Unnamable* is a case in point. Obviously, for a writer of Beckett's Berkeleyan and nominalistic preconceptions, the title represents the very essence of deprivation, just as the voices heard by the central character in the "pit" where the Unnamable is fixed, define the essential poverty of symbolism, of mental life and of behavior. The real torment under such conditions is the inescapable need to go on talking. Alvarez says that the vulture gnawing eternally at the innards of this author is language itself, and the agony and boredom of literature as an occupation. That helps to account for the evolution of the playwright out of the novelist, and for the special nature and quality of his plays. Neurotic speech becomes the characteristic form of his dramatic discourse.

The subject of *Waiting for Godot* is how to pass the time, given the fact that the situation is hopeless—a dramatization of the theme first announced by the youthful Beckett, a snooty young academic, freshly graduated with honors, in his essay on Proust. At the end of *Godot*, Vladimir makes the same point: "Habit is a great deadener." The theme of habit, with all its negative implications, is best expressed by the remark that *Godot* is a play in which "nothing happens, twice." That is, since the subject is habit and boredom, plot is dis-

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pensed with; dialogue is maintained in part because there is nothing to say. One is tempted to add that this circumstance is also, conceivably, a conscious expression of Beckett's poverty of inventive technique, reminding us of Jung's famous remark that suffering is in essence a failure of creativity. Alvarez points out not only that the characters are, as usual, without history but also that the talk is kept going by the device of instant forgetfulness, suggesting brain damage. As for Godot himself, who never appears, Alvarez suggests that he is "just another diminutive god like all the other little gods—some divine, some political, some intellectual, some personal—for whom men wait, hopefully and in fear, to solve their problems and bring point to their pointless lives, and for whose sake they sacrifice the only real gift they have, their free will."

The poignancy of the play *Endgame*, first produced a few years later in Paris and London (in 1957), depends on the continual tension between a lost world of feeling, once known and still yearned for, and the devastated present. As Hugh Kenner has said, we fancy the stage, with its high peepholes, to be the inside of an immense skull. The solipsism of the scene, combined with the effect of the style, expresses the deficiency both of our perceptions and of our feelings—the deficiency of life itself when it comes to justifying action and effort. Of the four characters, only Clov can move. He has a stiff-legged gait and is unable to sit down. His master, Hamm, is blind and paralyzed in a wheelchair—a bully who prides himself on his despair and helplessness, secretly guilty about his lack of pity for others. He yearns for death and is most happy when lying obliterated beneath his bloody handkerchief. Hamm's parents, Nagg and Nell, are legless and dumped in dustbins. The play and its personal relationships are dominated by the sense of an affective deficit, of being trapped or short-circuited or neutralized by the private character of experience itself. *Endgame* differs from the author's earlier work in its tragic sense of something valuable that has been irredeemably lost. Indeed, a renewal or continuation of life less desperate and possibly hopeful is suggested at the play's conclusion, with the unexpected appearance of a child beyond the gloomy interior visible to the audience.

Alvarez shows with superb clarity and consistency—discussing as he does the totality of Beckett's literary production—that his author is creative chiefly for the originality with which he restates the same case in unexpected ways.

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Paradoxically, for example, one of his most striking later works—*Imagination Dead Imagine*, published in French in 1965—describes a world in which the imagination is, quite literally, dead. That world's most prominent feature is a white rotunda almost invisible in the surrounding whiteness, and two white bodies, one male, one female, lying on their sides in the fetal position, back to back, head to arse. The point, obviously, is consistent with the significance of the voices that "constitute" and "motivate" the mental life of the author's earlier characterizations and with the significance of the literary life itself, here conceived no doubt as experience or personality, personal reality, per se.

I have suggested that *Endgame* concludes on a possible note of hope. In addition, as Alvarez points out, *Krapp's Last Tape* deals with the theme of grief rather than that of depression. Accordingly, the spirit of pure desolation attributed to Beckett by Alvarez is complicated by the essential ambivalence toward human existence of a number of Beckett's heroes, expressive not only of tragic heroism but also of a truer and deeper insight into pathology. The point is illustrated by a moving quotation from *Text VIII*: "Ah if no were content to cut yes's throat and never cut its own." The line suggests, among other things, the coexistence in Freudian theory of Eros and Thanatos, perhaps—and certainly tends to confirm G.C. Bernard's thesis of Beckett's psychiatric inspiration. It would seem that Beckett is more properly regarded as existentialist rather than nihilist in his attitudes, given his acceptance and domestication in his art of concepts first formulated by psychoanalysis. □

## AUTUMN LEAVES

*This time I can't grieve*
*over their deaths in yellow, wine red*
*and orange. The tree bark is light grey*
*and a blue jay has just swooped in*
*to land on a branch, shaking*
*leaves loose on impact, they*
*are that weakened and insensible*
*of what's happened. They do*
*a dance upon the air*
*as they fall.*

David Ignatow

# The Last to Speak That Tongue

A CROWN OF FEATHERS. *By Isaac Bashevis Singer. Farrar, Straus and Giroux. 342 pp. $8.95.*

**SEYMOUR KLEINBERG**

Isaac Bashevis Singer is the archivist of Yiddish grief. His terrible fables are images of the humiliations of sickness, age, mortality. Even in his rare excursions into whimsy the sense of disaster is imminent. Available in English translation now is a formidable body of work: seven novels; six collections of short stories, ten children's books and one volume of memoirs. The achievement is unmistakable. This is the work of a major talent, first rate, a "figure."

Perhaps the poignancy of Singer's fiction lies in our knowledge that his is the last voice to sound like this. An entire literary tradition comes to an end in him, and that is also fitting since he is the chronicler of that special culture of Ashkenazi Jewry now shattered, alive mostly in memory and nightmare. The descendants of Bunsche Schweig are ghosts: all the fools, the slaves, the Yeshiva *buches* with their naive thirsts and sophisticated hungers, the saintly *schlemiels*, all are gone and mostly unmourned and unremembered. Then we read a typical Singer tale, "Grandfather and Grandson," from his new collection, *A Crown of Feathers*, and we are plunged into a past that is not even ours, but which we find ourselves bound to as if in a Jungian dream, doubly curious if one is no Jungian at all. Of course the real explanation for a reader's taking to heart the follies and futilities of pious *altes* and adolescent revolutionaries seventy years ago is simply Singer's talent. Isn't that enough?

Singer's vision is rarely sentimental; neither pessimism nor disgust touch his world, illuminated solely by a distant irony, lucid and chilling, creating the illusion that Singer's men and women are autonomous, beyond his control. More and more, the nameless narrators become personae with all the literal biographical baggage of the author. Usually this kind of whimsy is dangerous material to control, and my response to Singer the reporter is tinged with irritation. But the result, the reader's sense of Singer's helplessness in the face of his own creation, is the basis for the powerful effects of frustration and grief he creates.

Of the two dozen newly collected stories in *A Crown of Feathers*, fifteen use the first-person narrator as a character, and in three or four of these he is the central character. Unlike Conrad's Marlowe, who is never the center of action but always Conrad's filter, Singer, whose "I" usually functions very much like Marlowe, begins in these stories to experiment with a passive "I," in increasingly Kafkaesque situations, always irrational, destructive, paralyzing, hideously uncomfortable in their texture of cold, wetness, filth, hunger, which are themselves evasions of the real dilemma in these stories: pervasive guilt and anxiety. This underlying malaise is aggravated by the cool irony of the narrative voice, so aloof from follies and stupidities, always mocking them and undercutting their tragic, if vicious, possibilities. In "Enemies, A Love Story," the passively monstrous *schlemiel* is drawn as it were definitively—a type that increasingly dominates Singer's fiction: the unsympathetic victim, the man whose weaknesses and handicaps are nearly insufferable, and irritation is a kind response to his predicament.

Perhaps it is just a matter of coincidence, but the emergence in Singer's fiction of the hero who is both victim and *schlemiel* occurs during a time when the author has found a new audience among *New Yorker* readers and great success as a speaker at colleges and art centers. And is it also coincidence that no single story in this new collection, good as many of them are, meet the standards set by "Gimpel the Fool," "Blood," or "The Slaughterer"? It seems to me that the more worldly the author becomes, the more private, idiosyncratic and self-indulgent the fiction grows. Again, Singer's delightful obsession with the supernatural, which in his earlier fiction could be taken as symbolic of humanity's essential irrationality, now seems less metaphoric, peculiarly literal. *A Crown of Feathers* is the least rewarding of Singer's six short-story collections. Nevertheless his literary craftsmanship and sophistication, and the special Singer voice, are here and gratifying; only in comparison with his past achievements does the book fall short, give less pleasure.

Singer never deals directly, as far as I know, with the experience of occupation and deportation. Instead, that nightmare comes to us through the minds of the survivors, through the chilling foreknowledge of Polish life on the eve of war. We see the holocaust in the memories of Herman Broder or in the implicit fate of Asa Hershel, wait-

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ing for the bombs to fall on Warsaw. That is despair without self-pity, numbing and empty gratification. It is a vision of heroic proportions, and our eyes widen in recognition that what is still mourned by Singer are the verities defeated. Here is literary humanism's last great tragic voice. After Singer, who has enough credence in human dignity to despair of its loss? After Singer, we are amid the knaves and the fools. □

# Truth Is the First Casualty

FREE FIRE ZONE: Short Stories by Vietnam Veterans. *Edited by Wayne Karlin, Basil T. Paquet, Larry Rottman. McGraw-Hill. 208 pp. $5.95. Paper $2.95.*

**JERRY GRISWOLD**

This book couldn't have appeared more precisely on cue. As the nasty shadow of post-Vietnam retrospection seemed about to ruin TV dinners, our attention was turned to the POWs—they had Cornish game hen tonight, would they be impotent, they're flirting with stewardesses. Cameras zoomed in to catch "candid" and "personal" shots of a wife's first call from her husband in years, without a twinge of conscience on either side. *Free Fire Zone* comes like a brisk light rain at a voyeur's picnic.

These twenty-four stories are published by 1st Casualty Press, the group of Vietnam veterans that brought out the highly praised collection of veterans' poetry, *Winning Hearts and Minds.* They were our "surrogates" who, whether we agreed to it or not, carried out Vietnam policy in the name of the American audience. But they are victims as well as agents by the same inexorable principle that dulls the ax as the wood is chopped.

If Aeschylus is right—"In war, truth is the first casualty"—then there is a great number of things that we have to unlearn before we can see, as do these writers, "behind the pasteboard mask the demythicized reality." It is the situation described by George Davis, whose novel, *Coming Home,* is excerpted in the book:

> Walking through ghosts, we used to call it down South, before Harvard, before everything became literal and scientific, and then became more unreal than it ever was before, leading straight to Vietnam. Before a million explanations came down between me and what I feel, and then all the explanations proved to be lies.

The recognition of the lies leaves these men estranged in a demythicized loneliness, part of an alien segment of American culture called the Armed Services, in an alien country that for the most part doesn't want them. The stories are full of interior monologue and estranged narrators that make Henry of *The Red Badge of Courage* look like a moral goldbricker. The heroes of these stories are and are not part of the American tradition—Sad Sack, Sgt. Bilko, Mauldin's characters, Gomer Pyle. They are drawn more along the lines of Thersites, the cynic who bad-mouths the Greeks during their seige of Troy—the army's greatest curse, the bitter mumbler. Aitken's Lederer in "Lederer's Legacy" is of this ilk. He is almost impishly perverse with his conversational and conspiratorial pot shots. Karlin's Joshua, in a number of stories, is a sardonic mumbler, not like John Wayne, for swagger, but because the war has made him jaundiced and mean.

There are others who have seen the reality concealed by the myth, and tried not to become estranged cynics. They try to keep up the pretense of the hardened veteran but, as John Kimpel observes, it is like "melting wax inside the granite," and the result is further confusion of the spirit. The world breaks into fragments. The characters try to put the pieces together, resorting to elementary and reductive obsessions. The narrator in "The Candidate" becomes obsessed with trains, and Lederer consoles himself with magical beliefs—for example, he will remain unharmed if he kills no one.

In the face of reality words too become suspect. They have been the masks, the vehicle of deceptions and atrocities. In "Bangalore," for example, porno-language masks feelings, people are designated by rank ('Cruit, Sarge), army jargon replaces facts ("Max" for death); in the same way "gook" makes murder easier. "Majors," James Dorris observes in his story, are "never at a loss for words."

In Jim Aitken's "Lederer's Legacy," the finest story in the collection, we are left with silence. It is Lederer's task to write up thousands of commendations for heroism, a task made a bit easier by his catalogue of fifty stock phrases. Unlike Howard in the story, who talks continuously and compulsively so as not to think about the war, Lederer is often silent because he has found how empty words are:

> He gets killed . . . what are you going to say. . . . That would make any sense? In 250 words? Maybe the problem is being too close to words for too long . . . when something which screams of it comes along you only have the same words left to try to make it come alive.

When Lederer does speak to the narrator his words are carefully chosen, cryptic, allegorical. His true legacy to the narrator is a fable he admits may or may not be true about the death of a Vietnamese woman. Like the Ancient Mariner, he acutely observes, "The nice thing about this story is, now that you have heard it, what happened is a part of you."

It is probably for that reason that the fables of the collection—"Meeting," "Out With the Lions," "Temporary Duty"—are most effective. They are landscape paintings, not symbolically pointing elsewhere but demanding attention to and meditation on the facts. Wayne Karlin's pieces of this kind ("The Vietnamese Elections" and particularly "Search and Destroy") are brilliant and hierophantic. Divorced from a need for contextual reality his emotional truths depend on the reader's discovering them and are doubly powerful, doubly transfiguring.

Other stories work by a different method—humanizing the "gook": Rottmann's "Thi Bong Dzu," "The Interrogation," "Children Sleeping." Their effects are like close-up photographs of Vietnamese people, a healthy alternative to the fleeting and panoramic glimpses afforded this war's audience.

In Paquet's "Warren" the sense of Vietnamese humanity is totally absent, and the reader stares at the "psychosexual sickness" that the editors suggest is at the bottom of the causes of the war. Warren, like Melville's Pierre, is full of ambiguities. He is at once the bright-eyed and complacent soldier-redeemer and perversely sexual. He continually strokes his chest with pride and at other times engages in behavior that smacks of necrophilia, vampiric whoring with the "natives," and unrecognized mental illness. He is strangely and eerily uncomprehending, believing at times, by a kind of pathetic fallacy, that the Vietnamese women desire his perversities.

"Warren" and many of the other stories link the war with depraved sexuality. Even to a nation inured to the polite obscenities of *Playboy* the "psychosexual sickness" revealed in these pages will shock as it is intended to. There is a failure in many of these stories "to

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represent the human condition in the central tradition of natural feeling"—as Allen Tate observed about "Our Cousin, Mr. Poe"—"the natural affections are perverted by the will to destroy."

Karlin's Joshua, like Warren, is engaged in a kind of sexual imperialism. After making brutal love to a Vietnamese whore Joshua is startled when she turns to him with a "question and her humanity." Shocked by that, disgusted with the recognition of his own need, he snaps back, "What the hell do you want?" The complacent redeemer needs and wants nothing.

We are faced again and again in these stories with the ambiguous problem of Melville's *Pierre*, that of the paradoxical redeemer who needs redemption. The circle is only broken in one story, "The Rabbi." When his superior adamantly suggests to Rowan that, with his facility in the language, he should switch to another unit so he can help the people, he replies: " 'I *like* them. . . . I don't want to help them in the sense of . . .' his voice trailed off. 'It's hard to explain, sir.' "

*Free Fire Zone* is not war literature. It doesn't provide the vicarious thrills of riding alongside the ace in the cockpit. And it is not intended to provide liberals with fuel to feed the fires of outrage, as if outrage alone were sufficient exorcism. *Free Fire Zone* is not even *anti*-war literature, for what is wrongheaded in that is caught in the anonymous Zen poem "Anti-War Warrior":

> *I said the way to end the war*
> *Was to be nice to other people.*
> *He wanted to argue.*

It is much more subtle.

*Free Fire Zone* has a structure despite the fact that it is a collection. It moves backward, from stories of those who are aware to those who are complacently unaware of the sources of confusion and self-deception. And the reader is only fully prepared to read the book after he has come to the end of it the first time. The authors have ceased to believe in an ideal America needing no improvement, hence burdened with the task of saving others. As George Davis says: "I don't know how I can ever feel right about America again, after what they got weak-assed me to do over here."

These writers have ceased to believe in the myth of an imperfectible America, and their stories are meant to make uncomfortable the complacent who do believe in it. But the stories reveal the writers themselves—they can't be comfortable in their disbelief either. It would be wrong to step back and say, America must be a great place if writers like these are concerned with perfecting it. That is the kind of complacency this book argues against. Its contributors have a kind of higher patriotism for which we can be grateful but for which we can scarcely take credit. □

# MUSIC

## DAVID HAMILTON

That the long-awaited Metropolitan Opera première of Berlioz's *Les Troyens* unquestionably projects much of the work's epic grandeur and passionate lyricism is the particular achievement of musical director Rafael Kubelik. Every note one heard breathed the conviction that comes only from commitment and hard work. Some of the singing is distinguished; almost all of it is capable. The choral work is uncommonly forceful and unanimous. The orchestra plays warmly, cleanly, virtuosically—we encounter Berlioz's idiom often in the concert hall, but of course to the opera players it constitutes something of a novelty, and they cope with it admirably. Special effects like the chilling steely string harmonics that ring through the last-act apparition scene were impeccably realized. The full Berliozian panoply of the Trojan horse's progress was impellingly built and controlled (although the house's dreadful amplification system sabotaged the climax somewhat, and was deleterious whenever employed). The *Royal Hunt and Storm* bounded to a climax of almost Beechamesque recklessness. Kubelik surely has the secret of this composer's elastic rhythms and phrases; without generating quite the animal excitement of Colin Davis' well-known reading, he yet achieves both sweep and a very special lyrical impulse. Only one section utterly failed to convince: the octet with double chorus following the report of Laocoön's death in Act I simply did not hang together, although the second performance already showed some desirable improvement in ensemble and intonation.

The physical production, designed by Peter Wexler, does not match the glories of the score, nor the sweep of the tragedy enacted within; indeed, it rarely responds to the vivid pictorial and gestural qualities of Berlioz's music. Although expensive ($400,000 was quoted), it looks impoverished, and its archaeological exactitude is irrelevant to the neo-classic ambience of music and drama. One does not ask for a literal imitation of Poussin or Claude Lorrain, but surely something of their repose, their sense of space, and—above all in the langorous twilight of the scene leading up to the great love duet—Claude's special kind of light, is called for here. The attempt to avoid stage waits for scene changes is admirable, but the concurrent tendency to override Berlioz's full stops visually—the turntable revolving one scene into the next—undercuts the music, implying cumulation when a new beginning was really intended. The direction, too, seemed insensitive in this respect: Cassandra's first number begins with an emphatic upward gesture in the orchestra, clearly implying a sudden physical movement—*but she stood stock still*, as the merry-go-round glided her slowly around.

Few composers wrote as explicit stage directions into their scores as did Berlioz for *Les Troyens*; he had known the *Aeneid* since childhood, and its details, its resonances, fall into place throughout the opera, even where he is freely inventing (see David Cairns's splendid essay on Berlioz and Vergil, in his newly published collection of criticism, *Responses*, Knopf, $8.95). When, after the love duet in Act IV, Mercury appears in Carthage to prod Aeneas on to Italy, he is directed to strike Aeneas' shield; Berlioz sets this to music, too, with a massive gong stroke that colors the sound of the entire episode. At the Met, we heard the sound, but saw no stroke, no armor—just a projection of Mercury's head against the sky. Such objections may sound pedantic—and often are—but not when the composer has written out the stage direction in music.

The film that purports to show us the *Royal Hunt and Storm* seems an irrelevant disaster—full of galloping farm horses without riders, lacking any but superficial attention to the again very explicit directions. Shown on a small round screen toward the back of the stage, representing the pupil of a large abstract eye, the film is monotonous in color (mostly pale blue and white), fuzzy of focus (only on a third viewing did I feel confident in construing what I was seeing), and without impact. Other cinematic experiments, including the Trojan horse itself, were also weak; they didn't even mix well with the production's usual idiom.

Opening night offered a special fillip of casting, for Christa Ludwig was indisposed, and Shirley Verrett added the role of Dido (the most extended part in the last three acts) to her regular assignment of Cassandra (who dominates the first two acts)—a remarkable feat, if not completely convincing. The effort of differentiation limited Miss Verrett's scope in both parts, and she (wisely) held back here and there, to save her voice. At the second performance, Ludwig had recovered and Verrett sang a



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more intense, colorful and vocally prodigal Cassandra. She is good in both parts, but obviously still better doing them one at a time.

Jon Vickers sang Aeneas in Kubelik's 1957 London production of the opera. Sixteen years later, he retains a passionate intensity that is most impressive, even though a clear delineation of some passages (particularly the "Inutiles regrets" aria) is now beyond him. His best moments are when his rampant energy is briefly contained, as the farewell to Ascanius in Act III. The enormous cast included several other notable portrayals, particularly John Macurdy's sonorous Narbal, Mignon Dunn's rich-voiced Anna and Judith Blegen's convincingly boyish Ascanius. In the mute role of Andromache, Felicia Montealegre offered a particularly distinguished piece of miming, sensitively attuned to the touching work of the clarinet soloist.

I cannot be sure which is more difficult—to stage *Les Troyens* well or to sing and play it well. I do know which is more important: a perfect staging of a leaden musical performance would not have convinced an audience as did this very imperfect mounting of a very fine reading of the score. The best sign for the future of the Metropolitan Opera lies in the evidence that somebody up there apparently realizes this. □

# THEATRE

## HAROLD CLURMAN

Joseph Buloff is playing in a semi-musical show at the Eden Theatre on Second Avenue and Twelfth Street. Called *Hard To Be a Jew*, it is based on an endearing comedy by Sholem Aleichem dramatized from a novel of 1912 by that great humorist.

But who is Joseph Buloff? Theatre buffs know that he was the peddler in the original production of *Oklahoma*—a career, Buloff said, rather than a role. Under my direction in 1947 he also appeared (along with Uta Hagen and Jo Van Fleet) in an adapation of a Soviet play called *The Whole World Over*. These items are meant to indicate that while Buloff, now 75, has been around in a number of Broadway plays, after long years on the Jewish stage in Vilna (Lithuania), New York, Buenos Aires, Israel and tours in English as well as in Yiddish, in Miller's *Death of a Salesman* and *The Price*, and much admired by reviewers and audiences everywhere, his talent has rarely if ever been fully evaluated.

Buloff is one of the most brilliant actors in the world. He is himself "total theatre." One imagines him a descendant or offshoot of the *commedia dell'arte* tradition. His acting is all rhythm. Everything in him dances: his body, his hands, his fingers, his face, his voice. He might be called a "clown," but for us that has much too limited a connotation. The French word *cabotin*, favored by Meyerhold, more closely approximates Buloff's quality, but we have no exact translation except the pejorative "ham." Buloff is an artist: an uncommon phenomenon among actors.

He seems agile even while standing still. But he rarely stands still; he is constantly in motion, even when the movement is so minute that we feel rather than see it. His multiple gestures—they weave, flutter, twist, turn and fly—are not to be equated with the gesticulation ordinarily associated with Jewish folk. The source is the same, but *his* gestures speak, describe, sing; they are artfully dramatic, they provide graphic meaning and commentary. They convey the nervous eloquence of a suppressed and irrepressible people. If we are not permitted entirely to utter what we think and feel, the gestures appear to say, then we shall communicate in a language of physical signs. These will be both terse and fluent, abstract and yet eloquent, so that all who observe them may not only understand and be convinced but revel in what they "hear" with their eyes. Buloff's acting creates a kinetic eloquence which is the basic speech of the stage.

His vocal range is narrow: its sound approaches the treble; it possesses little body. Yet there is in him so keen a musical sense of the expressive possibilities inherent in his means that one gets more from his delivery than from most actors renowned for fine voices and meticulous speech. The thin voice and short body have become instruments of wonderful plasticity with very little in them of the "exquisite."

Buloff is a comedian whose pathos seems to reside in the antechamber of his consciousness. In his hand, props become part of a dramatic choreography. On his figure the most commonplace clothes and costumes assume telling character. The way he wears a hat—any hat—tells a story, makes a statement—both funny and true. (I once saw him play a 15th-century Pope; when he traced the cross of benediction both the grace and the inquisitorial menace of the Church were defined.) With all this there is a faintly discordant lyricism in his acting, a lyricism barely willed or planned, but a consequence of personal and historical circumstances or accidents. The subliminal effect is of a being who will everywhere be an "oddball" surviving by wit and guile.

I have seen Buloff in every manner of part—he was a professor of architecture in *The Whole World Over*, a French detective in a play by Felicien Marceau, and in *Hard To Be a Jew* a minor merchant, but there is always a trace of a person somehow out of place, self-protective through shrewdness and imagination, a lovable scamp. If he is not always "reliable" or "respectable," it is because the world has forced him into a corner where he defends himself with something like genius, and with the humor of one who has passed beyond the need to hope because for him life is enough, no matter how much mischief and travail he may find in it.

Only the situation of *Hard To Be a Jew* remains in its present version: the story of a Jew and a gentile, students who as friends exchange identities and passports in the Russia of Nicholas II, a "trade" in which the non-Jew learns how hard it is to be a Jew. Sholom Secunda has written some pleasant tunes for it, well sung by everyone in the amiable cast. Pearl Lang has arranged simple and suitable dances, and some spoken "pointers" are given in English for New Yorkers so benighted as to be ignorant of Yiddish. The result is not "art," hardly Sholem Aleichem, but there is always Buloff! □

# DANCE

## NANCY GOLDNER

Occasionally a ballet is worth seeing for the way it enlarges a dancer, and makes a long-standing promise come true. Such a ballet is Robert Joffrey's *Remembrances*, which was introduced by the City Center Joffrey Ballet during its fall season. The enlarged dancer is Francesca Corkle. Corkle has a phenomenal technique that, until *Remembrances*, had been merely exploited. She has always been the whiz kid, so capable in all the most immediately visible categories of technique—speed, *ballon*, turns, balances—that despite a decidedly plain face she rose to the top in a profession where looks count. By somehow pushing aside, or perhaps by just ignoring the *enfant terrible* in Corkle, Joffrey made her dance for the first time. The brilliance is there if you look twice, but most apparent is her gracious restraint, a superb tautness in all her muscles, and an exciting sense of power held in check—in other words, a process of making latent what had been too evident, and of recasting the soubrette (the allegro



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dancer) into the lyricist (the adagio dancer).

Rarely does a choreographer help a dancer mature. Only Balanchine does it all the time. Ashton did it for Margot Fonteyn, but for her alone. Perhaps Antoinette Sibley and Anthony Dowell, current stars of the Royal Ballet, could now be flourishing under Ashton as they originally did in his *Dream* (1964), but Ashton has stopped working. In the 1950s Robbins brought out the wit of Tanaquil Leclerq, but not through primarily technical means. One is tempted to say that Tudor and Nora Kaye had a mutually creative relationship, but on second thought I would say that he used her for his own ends.

That sort of exploitation looms large in modern dance. Modern dance choreographers tend to project their own idiosyncratic techniques on other dancers. And because modern dancers are not working out of *a* technique but from so and so's technique and supra-personal vocabulary, they have little chance to discover their own dancerly personalities. I think that is why there is relatively little individualism in modern dance companies and why many modern dancers become choreographers, when in fact they are really interested in learning how to assert their own qualities of movement. What are these qualities? It's one of *the* questions for anyone interested in the aesthetics of dance, and it's not knowing the answer to my satisfaction that sustains my interest in dance reviewing. At any rate, when Corkle made me feel the power of power held in check, she was dancing in the truest sense, and this interested me more than do triple pirouettes, although they are exciting too. Martha Graham's big, arcing leg kicks are more interesting as gusts of energy that quickly die than as analogues of joy or pain, and her dancers interest me not for their dramatic abilities but for their technical prowess in being able to make a gust of energy die quickly. The dancer's personality comes forth in technique, specifically those aspects of technique that cut across all modes of dance.

*Remembrances* did not show Corkle doing what she already knows how to do (the star vehicle heresy to which ballet often succumbs), nor did it use her as an instrument of a godlike choreographer. Joffrey and Corkle met somewhere in the middle of an anonymous, flexible and serviceable set of rules and regulations called ballet.

Corkle must have been a challenge to Joffrey because of her precociousness, but anyone who elects to set a ballet to Wagner is already looking for trouble. He must build a structure on territory without rhythm or beginnings and ends. Dynamics are hard to put your finger on. Bathos is hard to avoid. It is no small triumph that *Remembrances*, while it takes lavender romanticism to the end of the line, is not bathetic.

The singer sings in that "almost unbroken stream" which biographer Paul Bekker describes as Wagner's state of mind/speed of composition when writing the Album-Sonata (serving the first part of the ballet) and which has become practically synonymous with all of Wagner. A woman sits beside the singer and makes soft, yearning movements in the upper body, as though dancing out the singer's part and singing out the dancers' parts. Functioning as a middleman between song and dance, she is remembering love scenes that are simultaneously brought to physical life by the dancers. They float on and off in couples, also in an unbroken stream. Among them emerges a lead couple, who carry a theme of farewell or departure.

Joffrey has followed Wagner all the way in mood. The couples dip and sigh and gaze into space rather than at each other. Intimacy is not wanted here; it would cause the audience to identify with the dancers, which would then destroy Wagner's other-world of unspecified emotion and sound. But Joffrey goes against Wagner musically by placing textural complications in the dancing. He often has two groups moving to different rhythms simultaneously. There are brief spells of double-time dancing: two steps to one beat. (Needless to say, the rhythms and beats are in Joffrey's head, not his ears.) Sometimes the dancers suddenly swish to the floor with unexpected brio, adding stress and dynamics to Wagner's stream. These elaborations are impositions on Wagner. Why choose Wagner unless you are willing to follow him on his own terms—as Lorca Massine followed Strauss's *Four Last Songs*, which presents the same problems? Yet Joffrey's compromising approach did insure that Corkle would be presented as a musical dancer, and it did steer the ballet away from bathos. Also, Joffrey has good taste. He knows when enough is enough—when a lift must be terminated, when to deck out a passage, when to be functional.

*Remembrances* didn't offend when it so easily could have, but it did not enrapture with beauty either. Like Wagner, it goes on too long. Very often enchainments reminded me of moments which in other ballets are sustained motifs, but which in *Remembrances* stick out as stylistic devices. They are small moments and in themselves inconsequential—the way the arms are held simply at the sides, stepping backward on point for a turn, changing direction midway during a lift, hand-over-hand maneuvers for a series of promenades in attitude, an airy use of space for the transitional steps when a couple separates before joining again—but in sum they take one's concentration off the ballet at hand. It would be unfair to call Joffrey's choreography an amalgam of other things but the personal touch is not there. *Remembrances* is the first ballet Joffrey has made since 1967, when *Astarte* carried the multimedia vogue to its technological conclusion. Notwithstanding Jerome Robbins, who made a brilliant comeback with *Dances at a Gathering*, choreographers, like dancers, rust with layoffs. But that is speculation. □

## FROM THE LEDGE

*The crowd is a full nest*
*at feeding time. Does he*
*believe in death? Yes,*
*and he can prove it.*
*Between the building*
*and the falling he is*
*their mad mother homing,*
*a craw full of terror.*

Bruce Edward Taylor


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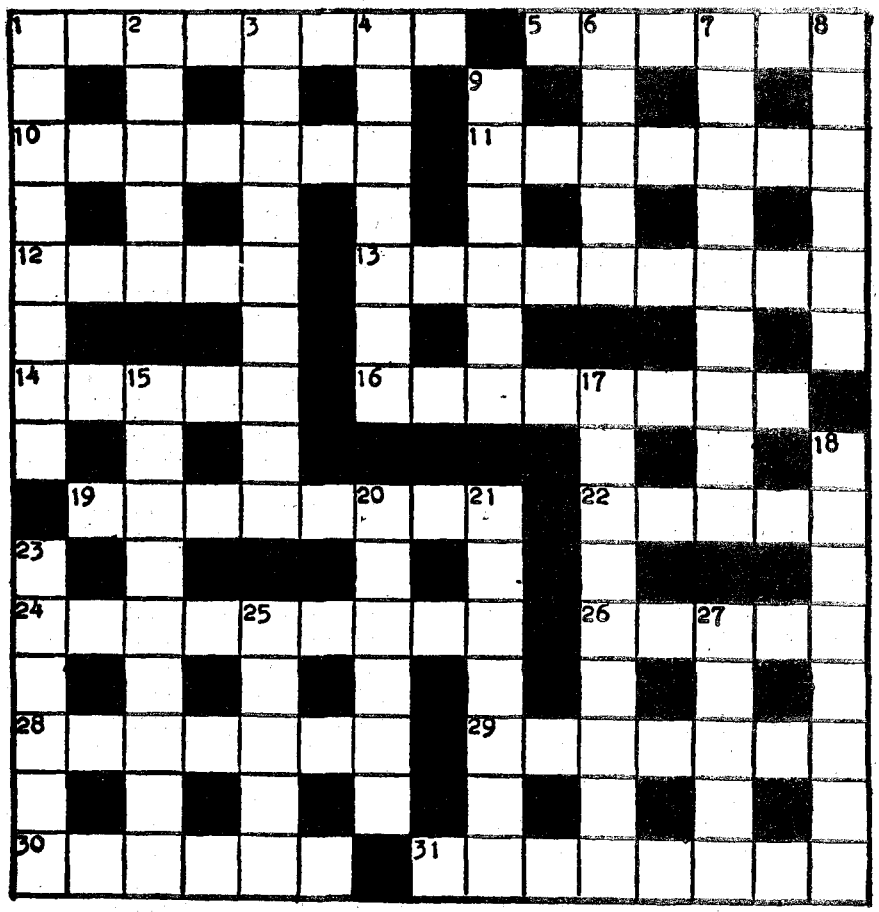
# Crossword Puzzle No. 1512

**FRANK W. LEWIS**



ACROSS:

1 Modern man might puff, instead of this; his version is not quite so deadly. (8)
5 See 26 across
10, 6, 16 and 27 Proving an unconscionable number can't make soup! (3,4,5,5, 3,5)
11 I thus drink too much, being in the natural element for it. (7)
12 The home team doesn't, 5 being the one tagged. (5)
13 With humans, big changes are called for when waiting to attack. (9)
14 The story of Greece? (5)
16 See 10 across
19 The ones of Strauss were the village type. (8)
22 Sudden things like the start of 1 across. (5)
24 With no frills and no feathers flying. (9)
26 and 5 across Bridge tiffs? Things are going to the dogs! (5,6)
28 Polish shouldn't be hard to understand with enough of this. (7)
29 It's certainly not peaceful coming from a place in Brazil to the States. (7)
30 What some people see in New York! (6)
31 Takes, as the opportunity occurs, little bits of air. (8)

DOWN

1 Dutch flying mammal, birdlike. (8)
2 Smells like an up-and-coming sign of the theater act! (5)
3 and 23 One of these should be tender not only in theory, but really so. (9,6)
4 You might get what's coming to you at such times. (7)
6 See 10 across
7 Does away with things, proving he is a slob! (9)
8 Kill the sound of something found on the road less frequently nowadays. (6)
9 Bob-tail sort, but not the middle of the city. (6)
15 The thing about skin trouble is that it's frustrating! (9)
17 Takes off in a hurry, as you can tell because of the sound of taps. (6,3)
18 Says something slanderous, such as the Irish might be surrounded by snakes. (8)
20 Constrain morally. (6)
21 This Adirondack region has something more commonly called flat. (7)
23 See 3 down
25 An essential part of lighter mineral? (5)
27 See 10 across

SOLUTION TO PUZZLE NO. 1511

ACROSS: 1 Double negative; 9 Twinges; 10 Outings; 11 Roosts; 12 Entrusts; 14 Needled; 15 Sonic; 17 Tiger; 19 Yawning; 21 Abattoir; 23 Adults; 25 Abusive; 26 Gristle; 27 Beat one's breast. DOWN: 1 Detergent; 2 Unicorn; 3 Light year; 4 and 24 Nest eggs; 5 Ground down; 6 Tutor; 7 Venison; 8 Asks; 13 Clay pigeon; 15 Spin-drier; 16 Crow's nest; 18 Granule; 20 Galatea; 21 Adam; 22 Twist.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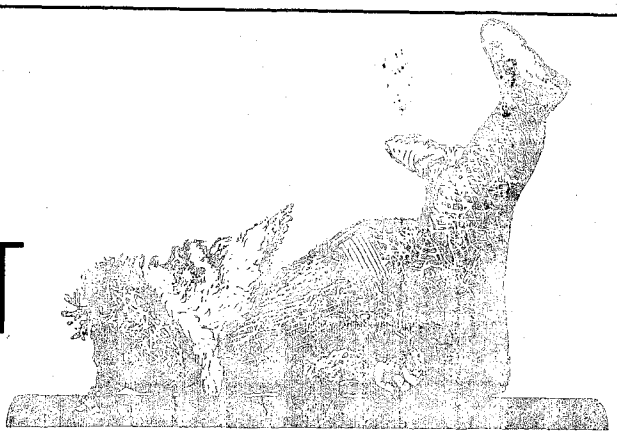

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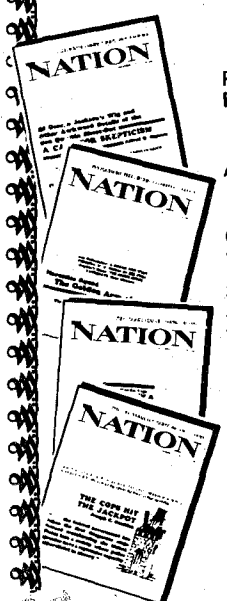


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